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Letter dated 8 December 2000 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council

The Governing Council of the United Nations Compensation Commission has concluded its thirty-eighth session, held at Geneva from 5 to 7 December 2000. Delegations from Kuwait and Iraq addressed the Council during its opening plenary meeting.

During the session the Council considered six reports and recommendations made by the Panels of Commissioners in the "D" and "F2" categories of claims. The reports on category D claims (annexes I-IV) consider individual claims for damages above 100,000 United States dollars and the reports on category F2 claims (annexes V and VI) consider claims from the Government of Saudi Arabia. The attached tables provide details of the amounts of compensation claimed in the reports and the amounts awarded by the Governing Council.

The Governing Council considered the report of the Executive Secretary: summary of activities, covering the period from 18 August to 31 October 2000. The report covers the processing of claims, requests for correction under article 41 of the Provisional Rules for Claims Procedure, the withdrawal of claims and the payment of approved claims. Annexed to that report is the 2000 progress report on the work programme (1997-2003).

Pursuant to the Security Council agreement reached in September 2000, the Council undertook its review of the current procedures of the United Nations Compensation Commission. The Council held informal meetings in October and November and during the session to discuss the proposals put forward by delegations and the recommendations made by the Executive Secretary. Following extensive discussion the Council agreed, by consensus, upon a number of conclusions and recommendations, as contained in its decision 114 (S/AC.26/Dec.114 (2000), annex VII). The conclusions address the time allowed for the review of panels' reports, the transmission of claims files to Iraq and oral proceedings. The Council also considered the issue of providing technical assistance to Iraq and stated that it will consider further various proposals relating to the provision of assistance to Iraq, noting that some Council members indicated that such proposals should not relate to claims other than the F4 claims, and will continue its efforts to formulate acceptable specific recommendations at the latest at the thirty-ninth session of the Council, to be held in March 2001.

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The Council discussed several issues relating to the processing and payment of claims, including the twelfth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (annex VIII) and adopted the accompanying decision approving corrections to certain category A and C claims (S/AC.26/Dec.113 (2000), annex IX). The Council decided that future corrections to claims in all categories, including categories D, E and F, should be reported in the article 41 report, so as to centralize recommendations made concerning all corrections.

The Council considered the issue of overlapping business loss claims filed in categories C, D and E4 by nationals of various countries, in the light of further information provided by the Secretariat. The Council recommended that this matter be further addressed in an informal setting of the Working Group members and the Secretariat, and that delegations be encouraged to provide their views to the Secretariat on this issue in writing.

The Council considered a request for the withdrawal of certain elements of a previously approved claim, and requested the Secretariat to acknowledge receipt of the withdrawal request and inform the claimant that it will be deemed to have waived its rights with respect to the receipt of further compensation for the withdrawn elements of its claim.

The Council heard a presentation on the current status of the review of the F4 environmental claims, and in particular the environmental monitoring and assessment claims. The Council considered an initial proposal for the tracking of funds awarded to successful environmental monitoring and assessment studies, and consequently requested the Executive Secretary to write to the six claimant Governments whose claims for environmental monitoring and assessment studies are being considered in the first instalment report, requesting information on the specific measures that have been put in place to ensure the efficient and expeditious transfer of funds to be awarded to successful claims. The Council also requested the secretariat to continue to provide status reports on the work of the F4 panel.

The Council discussed the request of the delegation of the Islamic Republic of Iran concerning the late filing of a number of category A claims by individuals. While expressing sympathy for the claimants who were not able to file their claims on time, the Council decided, on the basis of the previously established criteria, that the request by the Government of Iran for the late-filing of category A claims could not be accepted, and requested the secretariat to the notify the Government of the Islamic Republic of Iran of its decision.

The Council considered and took note of the report of the Executive Secretary on the distribution of payments and transparency, and the return of undistributed funds and requested the Secretariat to continue to inform the Council of the reports of Governments and international organizations on the distribution of payments and the return of undistributed funds.

The Council considered the issue of reporting on its activities to the Secretary-General and the Security Council, pursuant to paragraph 10 of Security Council resolution 692 (1991), and the note prepared by the Secretariat concerning the current practice with respect to such reporting. Delegations expressed differing views on the adequacy of the current reporting practice and the Council referred the issue to an informal meeting for further consideration.

The Council considered the matter of the unpublished decisions of the Governing Council in the light of the information note prepared by the Secretariat on this issue. The Council authorized the Secretariat to publish those decisions that were listed and attached to the Secretariat's note on this issue.

The Governing Council heard a report on the meeting of the Committee on Administrative Matters, which was held on 6 December 2000. The Committee took note of the report submitted to it by the Secretariat (S/AC.26/2000/R.50), which provided a final report for the 1998-1999 biennium on the basis of the final accounts as certified by the United Nations Controller and presented to the Board of Auditors, and a status update on the 2000-2001 biennium. The Committee also took note of the Executive Secretary's report on payments to Commissioners (S/AC.26/2000/R.51). The Committee also requested the Secretariat to continue exercising budgetary discipline and its efforts to reduce expenditures, and to report on its efforts and on the status of the budget at the next meeting of the Committee on Administrative Matters.

Finally, the Governing Council decided to hold a special session on 24 January 2001 to elect a new President and a new Vice-President of the Council, and to hold its thirty-ninth session from 13 to 15 March 2001.

(*Signed*) Ambassador Hans J. **Heinemann**
President of the Governing Council

Annex I

Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of individuals claims for damages above USD 100,000 (category D claims)*

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Introduction

1. At its thirtieth session held from 14-16 December 1998 the Governing Council of the United Nations Compensation Commission (the "Commission") appointed the "D2" Panel of Commissioners, comprising Messrs. Kamal Hossain (Chairman), Nabil Elaraby and Isomi Suzuki (the "Panel"). The Panel is one of two Panels appointed to review claims filed by individuals for amounts above USD 100,000 (category "D" claims).

2. This is the first report to the Governing Council of the "D2" Panel submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules").

3. This report contains the determinations and recommendations of the Panel in respect of the sixth instalment of category "D" claims, comprising 172 claims for individual business losses filed on the D8 and D9 pages of the category "D" claim form ("D8/D9"). 1/ As part of its review of these 172 claims, the Panel developed a methodology for resolving D8/D9 business loss claims filed in category "D".

4. This report describes the D8/D9 business loss methodology developed by the Panel, and outlines the recommendations of the Panel with respect to the claims in the sixth instalment.

5. With the completion of the D8/D9 business loss methodology as outlined in this report, all category "D" methodologies are now complete and all future claims considered in category "D" will contain loss types for which methodologies are in place. Accordingly, all future instalments will contain only "application claims". The Panel notes that some of these application claims will inevitably include new legal or factual situations, and that the Panel will address these as they are encountered.

I. OVERVIEW OF THE SIXTH INSTALMENT CLAIMS

A. Selection of the claims

6. The sixth instalment claims were selected from a population of approximately 11,000 category "D" claims with a view to presenting a broad range of business loss issues, as well as a group of claims that was representative of the size and diversity of the claims presented in category "D".

7. A selection of claims (the "Pilot Group") was used to enable the Panel, by its resolution of these claims, to establish a comprehensive methodology

that can be consistently applied in resolving D8/D9 individual business loss claims.

8. The selection of the Pilot Group was initially limited to those claimants advancing D8/D9 individual business losses only. In order to ensure that claims advancing only D8/D9 losses were representative of the issues encountered in claims with both D8/D9 and other category "D" loss types, a review of claims containing D8/D9 individual business losses as well as other category "D" losses was undertaken. The review confirmed that claims with multiple loss types presented no unique issues.

9. A sample of 300 claims with D8/D9 losses only was then generated to reflect the approximate percentage of claims from each of the submitting entities. An attempt was made to include claims from as many submitting entities as possible, even where the total number of claims submitted by certain entities was relatively few, in order to ensure that the broadest range of issues was present in the Pilot Group. In all, 19 submitting entities (18 governments and one international organisation) are represented in the Pilot Group.

10. The sample of 300 claims was reviewed, and 200 of the claims were selected for the Pilot Group based upon the types of business losses asserted and the issues raised in each.

11. When the Pilot Group of 200 claims was matched against other claims in the category "D" population, duplicate claims and claims by related parties such as business partners were transferred into the Pilot Group, bringing the number of claims in the sixth instalment up to 206.

12. One sixth instalment claim was determined to be inappropriately filed in category "D" and has been transferred from the instalment to the "E2" group of claims. 2/ Another sixth instalment claim was withdrawn by its submitting entity during the course of the instalment pursuant to article 42 of the Rules. Two claims were deferred pending the receipt of further information on the ownership of a number of related businesses, and one further claim was deferred to the 12th instalment of category "D" claims to be processed with its related claim.

13. A total of 30 claims in the sixth instalment were identified as being, in whole or in part, claims by shareholders in Kuwaiti "W.L.L." (with limited liability) entities. These claims were deferred from the sixth instalment by the Panel pending the receipt of guidance from the Governing Council. The deferral of these shareholder claims results in a final total of 172 claims in the sixth instalment. 3/ A more detailed

discussion of the deferral of these shareholder claims appears under Part V, Cross Category Issues, below.

B. Characteristics of the instalment

14. The 172 sixth instalment claims allege losses aggregating USD 146,932,806.00 in one or more of the loss elements contained in the D8/D9 methodology described below. The business losses claimed range in amount from USD 17,435 to USD 34 million. 4/

15. Most of the claimants in the sixth instalment operated a business in Kuwait prior to Iraq's invasion and occupation. There are, however, a number of claimants in the sixth instalment whose businesses operated primarily outside of Kuwait, who claim losses resulting from Iraq's invasion and occupation of Kuwait. Most of the businesses traded in consumer items such as jewellery, vehicles, textiles and foodstuffs. A significant number of claimants were engaged in the service industry, providing services in areas such as construction and engineering, legal, financial, medical, transportation, travel and travel-related services. Apart from these trading and service related businesses, several claimants were engaged in agriculture or agriculture related operations and a number were involved in the manufacture of textiles and other goods.

16. The D9 page of the claim form allows the classification of business losses into losses related to real property, business vehicles, tangible business property, business bank accounts and securities, loss of business income, income producing entity and other losses. Claimants in this instalment have sought compensation under all of these loss types. The most commonly claimed loss types are loss of business income and loss of tangible property (mainly furniture, fixtures, equipment and stock). In terms of aggregate value, the largest amounts claimed are also for loss of tangible property and loss of business income.

17. Sixth instalment claimants also submitted claims for uncollected receivables, goodwill, key money, contracts and other losses not specifically itemised on the D9 page of the claim form. In order to organise the variety of loss types encountered and to develop consistent review programmes for each, a second level of "loss elements" was created. Depending on the nature of the loss, each loss type claimed is reclassified into one of the following loss elements: real property repairs, real property rental income, tangible property, stock, livestock and agricultural products, cash, invalid Kuwaiti dinar, bank accounts in Iraq, bank accounts in Kuwait, vehicles, loss of business income, contracts, receivables, rent-a-permit, goodwill, key money and incremental costs.

18. The following table sets out the number of claims and total claim amounts by submitting entity in the sixth instalment. The amounts claimed are gross figures including any claims for interest and claim preparation costs.

Table 1. Summary of claimed amounts by submitting entity

Submitting entity	Number of claims	Amount claimed (USD)
Australia	1	203,416.00
Bahrain	4	1,725,535.00
Belgium	2	1,122,554.00
Canada	3	1,699,792.00
Cyprus	1	203,160.00
France	2	1,293,766.00
India	1	32,872.00
Israel	1	154,000.00
Jordan	34	23,392,715.00
Kuwait	98	46,131,770.00
Netherlands (the)	3	36,252,341.00
Pakistan	3	696,508.00
Saudi Arabia	2	7,250,821.00
Sudan	1	17,436.00
Syria	3	3,746,252.00
United Kingdom	4	9,021,666.00
United States	3	11,463,904.00
Yemen	5	2,210,513.00
UNDP (Washington)	1	313,785.00
Total	172	146,932,806.00

II. THE PROCEEDINGS

19. The Panel began its review of the sixth instalment on 22 July 1999. The Panel met regularly at the Commission's headquarters in Geneva to consider the claims in the sixth instalment.

20. In view of the complex legal and valuation issues arising from the development of the business loss methodology for category "D" claims, the Panel designated the sixth instalment claims "unusually large or complex" pursuant to article 38(d) of the Rules. Accordingly, in Procedural Order No. 1 dated 22 July 1999, the Panel gave notice of its intention to complete its review of the sixth instalment claims and submit its report and recommendations to the Governing Council within 360 days.

21. On the instruction of the Panel, technical missions composed of members of the secretariat and expert consultants visited Kuwait (twice) and Jordan (once) to conduct extensive interviews with claimants, Government officials, and private sector experts such as accountants and lawyers. These interviews provided the Panel with valuable information on business conditions in Kuwait before and after Iraq's invasion and occupation of that country.

22. By Procedural Order No. 2 issued on 17 September 1999, the Panel instructed the secretariat to transmit to Iraq copies of the claim files for relevant claims in the sixth instalment, including those claims of a certain magnitude and claims involving an Iraqi party or a transaction with an Iraqi entity. In total, 10 claim files were forwarded to Iraq, and Iraq was invited to submit a written response to each as well as to produce any evidence that might be relevant thereto. Iraq provided written responses with respect to all of these claims, along with a request for oral proceedings. The Panel has taken Iraq's responses into consideration in its work.

23. At the request of the Panel, the secretariat advised Iraq in May 2000 that due to the nature of the sixth instalment claims, it was not considered necessary to hold oral proceedings in respect of those claims. Iraq was, however, invited to submit any further arguments or information to the Panel in written form.

24. The Panel wishes to emphasise the importance of Iraq's participation in its work, and the attention that the Panel has provided to Iraq's responses to the claims in the sixth instalment.

25. The Panel has taken into consideration relevant information and views presented by a number of governments that have submitted claims, and by the Government of Iraq, in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules. This includes information and views received in response to article 16 reports made with respect to business loss issues that have arisen in category "E".

26. The D8/D9 business loss methodology covers every business sector suffering losses as a result of Iraq's invasion and occupation of Kuwait. It is intended that the category "D" business loss methodology apply to thousands of individual business loss claims with amounts ranging from thousands to millions of United States dollars. The development of such a methodology has been a complex task. As such, the Panel retained expert consultants in the areas of accounting and loss adjusting to provide advice on valuation matters, pursuant to article 36 of the Rules.

27. The Panel has also relied extensively on the work of the "D1" Panel in investigating conditions in Kuwait and the situation of Kuwaiti and non-Kuwaiti claimants in category "D", as outlined by the "D1" Panel in its reports to the Governing Council.

28. In addition, the Panel seeks to be consistent in so far as is possible with the verification and valuation procedures adopted for other category "D" and "E" losses. This is achieved by adopting the relevant features of these related methodologies in the assessment of D8/D9 claims, where appropriate.

III. LEGAL FRAMEWORK

A. Applicable law

29. Pursuant to resolution 687 (1991), the Security Council established Iraq's liability under international law for any direct loss arising as a result of Iraq's unlawful invasion and occupation of Kuwait. 5/ Resolution 687 (1991) states (in part) that Iraq:

> "... is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait."

30. Article 31 of the Rules identifies the law to be applied by panels of Commissioners in their consideration of claims. Specifically, panels are to apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decision of the Governing Council. Where necessary, panels are to apply other relevant rules of international law.

31. In its decision 9, the Governing Council provided guidance to the panels of Commissioners with respect to the valuation of compensable business losses. 6/ Specific guidance was provided with respect to contracts, tangible property and losses relating to income producing properties. The principles outlined in decision 9 form the basis of the business loss methodology developed by the Panel.

B. Evidentiary requirements

32. Article 35(1) of the Rules provides that:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

33. Article 35(3) provides that claims in categories "D", "E" and "F" must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss.

34. In addition, in decision 15 the Governing Council expressly states in relation to "all types of business losses, including losses relating to contracts, transactions that have been part of a business practice or course of dealing, tangible assets and income producing properties", that "[t]here will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury." 7/

35. The D9 page of the category "D" claim form instructed individual business loss claimants to:

> "- Attach a statement describing what happened (e.g., prevention of access, removal of property, looting or destruction) and the steps you took to reduce your loss or damages.
> - Attach a separate list describing each element of loss (such as damage to business property, loss of bank accounts and cash, damage to intangible assets, lost income, losses on uncompleted contracts).
> - Attach documentary and other appropriate evidence that supports your calculated value of loss. Include a statement describing your method of valuation."

36. In summary, for each individual business loss claim, the evidentiary requirements include a detailed factual description of the circumstances of the loss, a description of the method of valuation, together with documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss.

C. Causation

37. Resolution 687 (1991) of the Security Council provides for Iraq's liability for any "direct" loss arising as a result of its invasion and occupation of Kuwait. The Panel has been particularly concerned to ensure that all losses recommended for compensation are direct losses caused by Iraq's invasion and occupation of Kuwait.

38. In dealing with the issue of causation, the Panel has been guided by Governing Council decision 7, which provides that compensation is available with respect to any direct loss, damage, or injury (including death) to individuals as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention. 8/

39. In decision 15, the Governing Council confirmed that these guidelines are not intended to be exhaustive. 9/

40. Where losses were caused in whole or in part by the trade embargo and related measures, the Panel has also proceeded with reference to decision 15 of the Governing Council. 10/ Specifically, losses caused solely by the trade embargo and related measures are not compensable. On the other hand, losses that are attributable directly to Iraq's invasion and occupation of Kuwait are compensable in principle, even if those same losses are also attributable to the embargo and related measures taken against Iraq.

41. In summary, the causation analysis for each claim begins with reference to resolution 687 (1991) of the Security Council, and an assessment of whether the claimed loss is a direct loss resulting from Iraq's invasion and occupation of Kuwait. The Panel has interpreted

resolution 687 (1991) in accordance with the guidance provided by the Governing Council in decision 7 (and decision 15 for embargo related losses). In each case, the Panel assesses whether the causation test has been met based on one of the causal relationships outlined in paragraph 6 of decision 7, or some other causal relationship arising directly from Iraq's invasion and occupation of Kuwait. If a claim or a loss element in a claim fails to meet this causation test, the Panel recommends no compensation for that claim or loss element.

42. As an example of the application of these causation principles, the Panel has recommended compensation for numerous claims in the sixth instalment where the loss suffered was an inventory of goods looted during the period of Kuwait's occupation. The Panel considers such losses to be compensable whether the looting was undertaken by Iraqi soldiers or agents, or by others as a result of the breakdown of civil order in Kuwait. In contrast, several losses arising in the period following Kuwait's liberation have not been recommended for compensation on the basis that the claimants have failed to establish that they were direct losses arising from Iraq's invasion and occupation of Kuwait.

D. The role of the Panel

43. Three tasks have been entrusted to the Panel by the Governing Council. First, the Panel must determine whether an alleged loss falls within the jurisdiction of the Commission and is compensable in principle. Second, the Panel must verify whether the loss was actually suffered by the claimant. Third, the Panel must determine the amount of any compensable loss suffered by the claimant and recommend an award in respect thereof.

44. Taking into account the evidentiary and causation requirements that must be met by individual business claimants in category "D", and considering the legal principles that must be respected in the valuation of compensable individual business losses, a case by case assessment of each claim is required.

45. The Panel anticipates that the individual business loss methodology will, in future instalments, be applied to as many as 650 claims during a formal review period of six months. As such, each claim will be individually reviewed by the secretariat to identify legal and valuation issues for the consideration of the Panel. In addition, the Panel will review and test the application of the individual business loss methodology to claims in any given instalment.

46. In summary, the Panel's objective was to resolve the claims in the sixth instalment by establishing the principles for a consistent and objective methodology for individual business losses, based on a detailed review of a large number of claims under the close supervision of the Panel. The methodology described in this report is designed to meet these requirements.

IV. THE D8/D9 BUSINESS LOSS METHODOLOGY

A. Introduction

47. Once the Panel determines which losses asserted by the claimants are compensable in principle, the Panel proceeds to the verification and valuation of each of the loss elements claimed.

48. Four procedural steps are adopted in the verification and valuation of each loss element claimed: the preliminary adjustment procedure; the evaluation of evidence; the valuation of the asserted claim; and the determination of the recommended compensation.

49. Two aspects of the methodology, materiality and streaming, require elaboration prior to a discussion of the four procedural steps.

1. Materiality

50. In order to improve the efficiency of claims processing and to identify the areas with the greatest risk of overstatement, the Panel uses a "materiality" standard. The materiality level is defined as the level the Panel determines to be significant having regard to the amount claimed. Individual items and aggregate balances are deemed to be significant if they exceed the materiality level. All material items are processed through the four procedural steps outlined below.

51. Items that fall below the materiality level are deemed to be "non-material". If there is no evidence that contradicts the asserted claim, no further assessment of the non-material item is required and the asserted value becomes the recommended amount. Where there is evidence that contradicts the asserted value, the item is processed through the four procedural steps described below. An accumulation of non-material items can become a material amount in certain circumstances, which are set out in more detail in section 3(d), below.

2. Streaming

52. The Panel notes that the diversity of the claimants, the varied nature of their businesses and their differing pre and post-invasion circumstances necessitate a division of the claimants into different streams in order to ensure consistency and fairness within the claimant population.

53. The review of the Pilot Group reveals certain characteristics about the claims population. Firstly, the businesses that form the subject of the claims traded in a variety of forms of business association. Businesses often operated under a commercial licence that was rented from the licence holder, a common practice in Kuwait known as "Rent-a-Permit". In addition, most individual businesses were unincorporated partnerships or sole proprietorships with no requirement to maintain or file financial records for the business. This fact affects the ability of many of the claimants to provide proof of the value of their businesses.

54. Secondly, while the majority of the businesses were located in Kuwait or Iraq, approximately five per cent of the Pilot Group consists of claims by businesses located outside Iraq or Kuwait. These claims present different issues concerning the causes of loss and the ability to provide documentary evidence to support the loss. For the most part, these claimants have access to all relevant records to support their claims.

55. In addition, many of the non-Kuwaiti claimants did not return to Kuwait after liberation because of political or economic barriers. These barriers affected their ability to provide supporting evidence to supplement their claims. In many instances, these claimants have nothing more to support their claim than the documents that they were able to carry with them when they fled Kuwait. Many of these claimants have not resumed their businesses after the liberation, and because of these circumstances, will experience difficulty in obtaining further documentary evidence.

56. In order to address the varying circumstances of the claimants, in particular the quality and quantity of business records available to support individual claims, the Panel proposes three streams of claimants, as follows:

(a) Kuwaiti claimants who operated a business in Kuwait or Iraq before the invasion and who either returned to or never left Kuwait or Iraq (Stream 1);

(b) Non-Kuwaiti claimants, excluding nationals of OECD countries 11/, who operated a business in Kuwait or Iraq before the invasion but who did not return to Kuwait or Iraq (Stream 2);

(c) Claimants who operated their businesses principally outside Kuwait or Iraq (Stream 3).

57. The classification of a non-Kuwaiti claim into Stream 2 is intended to take into account the political or economic barriers to returning to Kuwait faced by these claimants. Some non-Kuwaiti claimants who did not return to Kuwait after liberation will not face such barriers. For this reason, the Panel has specifically excluded nationals of OECD countries from Stream 2.

58. The streaming of claimants is intended to recognise and address the different circumstances that affect a claimant's ability to prove a loss of business claim. The assessment of an individual's circumstances both before and after liberation results in placing the claim in one of the three streams. The Panel notes that Stream 1 claimants are largely individuals with claims comparable to the corporate claims filed in the "E4" group of claims (Kuwaiti corporate claims), while Stream 3 claimants are largely individuals with claims comparable to the corporate claims filed in the "E2" group of claims (non-Kuwaiti corporate claims). On the other hand, Stream 2 claimants are individuals with unique claim characteristics not directly comparable to another claims category.

59. In summary, the streams are designed to treat similarly situated claimants in a similar fashion and to allocate different values to certain types of evidence depending upon the obstacles faced by claimants in obtaining access to documentary evidence. The three streams described above are recognition of the great diversity of the category "D" business claims population.

60. Where a claimant falls outside the three defined streams, the Panel classifies the claim into the most appropriate stream based upon the individual circumstances of the claimant.

3. Procedural steps

(a) The preliminary adjustment procedure

61. The preliminary adjustment procedure ("PAP") is the first of the four procedural steps in the review of a claimed loss. The PAP verifies the stream into which the claimant fits, verifies whether the claimant has provided evidence of the existence of the business at the date of invasion,

determines the proper classification of loss types into loss elements and adjusts for any arithmetical errors or inappropriate exchange rates.

62. After verifying the appropriate stream for the claimant, the adjustment procedure confirms whether sufficient evidence has been provided to prove that the claimant was operating the business claimed for on 2 August 1990. The claimant may provide either conclusive or circumstantial evidence of the existence of the business.

63. Evidence is deemed either circumstantial or conclusive depending on the age and nature of the document. The closer in time the document is to Iraq's invasion date, the more likely it is to be deemed conclusive. Similarly, if the document is of an independent or third party nature, it is more likely to be deemed conclusive. If the document is generated by the claimant, or merely supports circumstances from which an alleged fact may reasonably be presumed, it is likely to be deemed circumstantial.

64. The evidentiary credit for conclusive evidence is higher than for circumstantial evidence to reflect its greater reliability. Failure to provide either circumstantial or conclusive evidence of the existence of the business results in the immediate failure of the claim.

65. It is also at this stage that each of the individual elements of the claim and its constituent parts are identified. The PAP classifies each loss type claimed on the D9 page of the claim form into one of following specific loss elements: real property repairs, real property rental income, tangible property, stock, livestock and agricultural products, cash, invalid Kuwaiti dinars, bank accounts in Iraq, bank accounts in Kuwait, vehicles, loss of business income, contracts, receivables, rent-a-permit, goodwill, key money and incremental costs.

66. The PAP seeks to identify the total asserted claim for each of these loss elements in a business claim and group together the homogenous items within the loss element. The specific review programme for each of the loss elements then adjusts the items classified thereunder in a consistent fashion.

67. The Panel will also amend the claim for any inaccuracies identified in arithmetic calculations or for inappropriate exchange rates. This adjustment will also include the elimination of any duplication of loss items contained in the claim.

(b) Evaluation of evidence

68. In determining the relevance, materiality and weight of the evidence submitted, the Panel is aware that deficiencies in evidence lead to difficulties in accurately quantifying claims.

69. Claims with evidentiary deficiencies that prevent the precise quantification of a loss introduce a risk that a claim is overstated; therefore claims should be assessed in accordance with an evaluation of the risk of overstatement. The expression "risk of overstatement" does not connote a deliberate overstatement by a claimant. Rather, the approach to the verification and valuation of claims balances the claimant's inability to always provide best evidence against the "risk of overstatement" introduced by deficiencies in evidence.

70. The evaluation of evidence seeks to assess the quality and quantity of evidence submitted in support of each element of the asserted claim. This evaluation is conducted for each loss element and its constituent items by attributing a fixed percentage score to certain categories of evidence. The provision of a piece of evidence from that evidentiary category will result in the awarding of the fixed percentage score. The scores will be accumulated to give an overall evidence score for the loss element.

71. Evidence may be provided for each loss element that supports one or more of three objectives: existence, ownership, and value. In order to receive the optimal evidentiary score, each type of evidence must be provided by the claimant. As with evidence of the existence of a business, evidence for a loss element may also be of a conclusive or circumstantial nature depending on whether it is of an independent or third party nature, or whether it merely supports circumstances from which an alleged fact may reasonably be presumed. Likewise, the evidentiary credit for conclusive evidence is higher than for circumstantial evidence to reflect its greater reliability.

72. Given the range of losses described in the claims population and the variety of evidence proposed to support these losses, the Panel does not seek to identify a definitive list of documents that will satisfy the evidentiary requirements. Rather, the evidence presented is considered in each case to determine the category of evidence to which it relates.

(c) Valuation assessment

73. The valuation assessment is intended to adjust the asserted value of a loss element for possible overstatement. The specific adjustments proposed will vary according to the nature of the loss being asserted. For example, a tangible property claim asserted on an historic cost basis is adjusted to reflect a reasonable level of depreciation; a claim for estimated repair costs is adjusted to reflect a standard maintenance cost.

74. The valuation assessment is designed to ensure that the values claimed are consistent with the nature and size of the business. The valuation approach also compares the asserted claims with the documentary evidence to adjust for any inconsistencies.

(d) Determination of recommended award

75. The recommended award in respect of a particular loss element is calculated by taking the adjusted value determined through the valuation assessment and multiplying it by the evidence score.

76. Once the review of all of the asserted loss elements is complete, a final review is undertaken to consider the following matters: whether the asserted claim is consistent with the nature of the business; whether the assertion of grossly inflated loss elements has resulted in the overstatement of the materiality level and therefore the overstatement of the final recommended award; and whether there is any duplication of loss elements.

77. Where the Panel concludes that the claim for a lost asset is inconsistent with the nature of the claimant's business and the claimant has failed to produce conclusive evidence of the existence and ownership of that asset, the Panel may recommend no compensation.

78. Where a large portion of the final recommended award consists of non-material items, the materiality level is reduced, and previously non-material items are reviewed in detail. This procedure is designed to ensure that inflated claim amounts do not take advantage of materiality levels to obtain unjustified awards.

79. Lastly, a check is made to ensure that no item has been duplicated in the valuation of the loss elements. Where such duplication is identified, the item is only valued once.

80. A description of the review programmes for each of the loss elements in the D8/D9 methodology follows.

B. Real property claims

81. Ten claimants in the sixth instalment asserted claims aggregating USD 3,065,734.00 for real property losses, defined as loss or damage occasioned to real property or fixtures thereto, repair work already completed to such property, the estimated cost of work not yet completed, or the loss of rental income derived from real property.

82. There was one claim in the sixth instalment that asserted loss of rental income from real property. The claim was by the owner of apartments located in Cyprus, which had been rented to a travel company for sub-lease to third parties. During the term of the lease, the travel company breached the agreement, stating that Iraq's invasion and occupation of Kuwait constituted force majeure. The claimant claimed for nine months of lost rental income.

83. The Panel finds that the loss was not compensable in the light of the determination in the second instalment report of the "E2" Panel (the "E2(2) Report") relating to tourism claims, 12/ which held that claimants claiming losses originating outside Iraq or Kuwait must show that the particular country in which the loss was suffered was the subject of a "credible and serious threat of military action by either side", within the meaning of paragraph 21 of decision 7, and that Cyprus was not such a country.

84. Consequently, the Panel defers any decision in respect of the valuation of lost rental income arising from real property until a compensable claim is before it for consideration.

85. The Panel was guided in its development of a method for valuing D8/D9 real property repair losses by the earlier work of the "D1" Panel in respect of D7(real property) losses. 13/ The principles of compensability and valuation established by the "D1" Panel have been adopted in the consideration of real property repair losses suffered by businesses, with minor variations. In particular, the method of determining the evidentiary score for D7 losses operates on a risk deduction basis, whereas the D8/D9 method is incremental. The incremental method of scoring evidence builds up from zero, which is the approach used for the valuation of all other individual business losses.

1. Compensability

86. Real property repair claimants, whether they are claiming for actual or estimated repair costs, are required to prove the existence and their ownership of a business on the date of Iraq's invasion and occupation of Kuwait, in addition to their ownership of the real property in question. In the Pilot Group this was typically proved through confirmation of ownership provided through the Public Authority for Assessment of Compensation for Damages Resulting from the Iraqi Aggression ("PAAC"), lease documents showing repair obligations, estimates or service contracts from contractors and receipts for repairs undertaken. These documents indicated the identity of the party paying for the repair, and the nature and scope of the repair or an estimate of the cost to repair. Other documents submitted by claimants included police reports, photographs of damaged premises, audited or unaudited accounts showing the book value of the real property or fixtures, insurance documents evidencing coverage for the premises, loss adjuster or civil engineer reports and witness statements.

87. Claimants must also prove that the damage to the real property was a direct result of Iraq's invasion and occupation of Kuwait. In the Pilot Group this was typically proved by witness statements, police reports, photographs showing the damage, the claimant's statement and other similar documents.

2. Valuation method

88. Where a claim for real property repairs, either actual or estimated, passes the legal test for compensability, the claim proceeds to valuation. Each real property repair claim is given an evidence score based on the type and quality of evidence provided. To prove the value of an actual real property repair loss and thereby build an evidence score, a claimant may provide invoices for repair work, a builder's estimate, receipts from the contractor, reports from loss adjusters or engineers, a witness statement regarding the loss and other similar documents.

89. To prove the value of an estimated real property repair loss and thereby build an evidence score, a claimant may provide a third party estimate or quotation prepared by a contractor or supplier, a builder's estimate, a report from a loss adjuster or engineer, a witness statement describing the nature and the scope of the loss and other similar documents.

90. Valuation for either estimated or actual repairs is based on whether the asserted loss represents repair, reconstruction or improvements costs. Historic cost information and benchmark data derived from the "D1" Panel's report on D7(real property) losses are used to characterise the loss. 14/ If a claimant has not clearly stated the basis of the valuation, the benchmark data is used to determine whether the repair cost is to be characterised as a repair, reconstruction or improvement cost. The value of the loss is then subject to appropriate adjustments for depreciation and betterment.

91. In the case of estimated repairs that have not been completed, if the claimant fails to provide an acceptable explanation for not having completed the repairs, a further risk adjustment is applied to the valuation amount. The Panel decides that a claimant's decision not to resume the business after liberation constitutes an acceptable explanation for not having undertaken the repairs.

C. Tangible property claims

92. Ninety-five claimants in the sixth instalment asserted claims aggregating USD 12,938,424.00 for loss of tangible property, defined as any loss of (but not repair to) any business property, equipment or machinery excluding real property, fixtures to real property, business vehicles, cash and stock in trade. Claims for repair of tangible property are treated as incremental costs incurred by the claimant and valued under the Incremental Costs review programme.

1. Compensability

93. Tangible property claimants are required to prove the existence and their ownership of the tangible property in question. In the Pilot Group this was typically proved through receipts evidencing purchase of the property and detailed lists of stolen or destroyed property. These detailed lists contained descriptions of items, numbers of items of each type, dates of purchase, purchase prices, claimed amounts, any depreciation of the assets, and similar information. Other documents provided by claimants included police reports, photographs of lost assets, replacement invoices, audited or unaudited accounts showing the book value of the assets, insurance documents evidencing coverage for the asset and witness statements.

94. Claimants must also prove loss of the tangible property as a direct result of Iraq's invasion and occupation of Kuwait. In the Pilot Group this was typically proved by witness statements, police reports,

photographs showing the destroyed asset, the claimant's statement and other similar documents.

2. Valuation method

95. Where a claim for loss or destruction of tangible property passes the legal test for compensability, the claim proceeds to valuation. Each tangible property claim is given an evidence score based on the type and quality of evidence provided. To prove the value of the lost or destroyed tangible property and thereby build an evidence score, a claimant may provide conclusive evidence of the existence and ownership of the business, internally generated business documents showing the value of the asset, third party confirmations of the value of the asset, documents showing the age of the asset, documents showing the cost of replacing the asset, a witness statement regarding the loss and other similar documents.

96. The valuation assessment of tangible property claims is based on historic cost, replacement cost or market value. If a claimant has not clearly stated the basis of the valuation, the claim is valued based on market value. The value of all assets is subject to appropriate adjustment for depreciation.

D. Stock claims

97. One hundred and eleven claimants in the sixth instalment asserted claims aggregating USD 44,489,003.00 for loss of stock, defined as loss or damage to the stock in trade of a business, that is the raw materials, work-in-progress and finished goods maintained by the business for manufacture, trade, sale or distribution. While stock does not normally include claims for vehicles or cash, these items are valued as stock if they are held as stock (this applies in the case of car dealers and currency exchange businesses).

1. Compensability

98. Stock claimants are required to prove the existence and their ownership of the stock in question. In the Pilot Group this was typically proved through stock takes, receipts evidencing stock purchases and detailed lists of stolen or destroyed stock. These detailed lists included descriptions of the items, numbers of items of each type, dates of purchase, purchase prices, claimed amounts and any obsolescence or slow-moving stock provision applied. Other documents provided by claimants included police reports, replacement invoices, audited or unaudited

accounts showing the book value of the stock, insurance documents evidencing coverage for the stock and witness statements.

99. Claimants must also prove loss of the stock as a direct result of Iraq's invasion and occupation of Kuwait. In the Pilot Group this was typically proved by witness statements, police reports, the claimant's statement and photographs showing the destroyed stock.

2. Valuation method

100. Where a claim for loss or destruction of stock passes the legal test for compensability, the claim proceeds to valuation. Each stock claim is given an evidence score based on the type and quality of evidence provided. To prove the value of the lost or destroyed stock and thereby build an evidence score, a claimant may provide evidence of the existence and ownership of the business, internally generated business documents showing the value of the stock, invoices showing stock purchases (a higher score is given for invoices dated within six months of the invasion), documents showing the stock balance in the period immediately prior to Iraq's invasion of Kuwait and a witness statement regarding the loss.

101. All stock claims are subject to downward adjustment for obsolescence, with the exception of cash held as stock. The obsolescence adjustment varies depending on whether the stock is considered to have a high, medium or low obsolescence.

102. Cash held as stock is not subject to a downward adjustment for obsolescence. It is, however, subject to a significant downward adjustment based on the risk of overstatement of cash claims.

E. Livestock and agricultural products

103. Five claimants in the sixth instalment asserted claims aggregating USD 1,650,740.00 for the loss of livestock and agricultural products, defined as loss of or damage suffered by a business with respect to animals kept for pleasure, breeding or slaughter, as well as loss of or damage to crops, feed or other agricultural products. As expected, all claims of this type advanced in the sixth instalment are for losses suffered in Kuwait. The Panel defers any consideration of the valuation method to be applied for livestock and agricultural products claims where the alleged losses were suffered outside of Kuwait.

1. Compensability

104. Livestock and agricultural products claimants are required to prove the existence and their ownership of the animals or items in question. In the Pilot Group, this was typically proved through detailed statements and lists, together with supporting evidence. The lists included descriptions of the age and gender of the livestock, numbers of animals, dates of purchase, purchase prices and claimed amounts. For agricultural products, the lists described the lost items, numbers of items of each type, dates of purchase, purchase prices, claimed amounts and any obsolescence applied.

105. The evidence submitted by claimants included Kuwait Government inventories of livestock and agricultural products, typically based on farm inspections undertaken prior to Iraq's invasion and occupation of Kuwait. Other evidence included inventories taken by the claimants, receipts, witness statements, replacement invoices, farm accounts and photographs.

106. Claimants must prove the loss of livestock and agricultural products as a direct result of Iraq's invasion and occupation of Kuwait. In the Pilot Group, this was typically proved by witness statements, photographs showing the damaged farm or agricultural enterprise and the claimant's statement.

2. Valuation method

107. Claims for livestock and agricultural products are either claims for the tangible property or the stock of a farm enterprise. As such, the first valuation exercise undertaken with respect to claims for livestock and agricultural products is to determine if the claim (or portion of the claim) is in the nature of a claim for tangible property or for stock. As an example, chickens kept for sale (as meat or for breeding) are in the nature of stock, while the chickens owned by an egg farm are in the nature of tangible property. This characterisation determines the evidence scoring to be applied; the same evidence scoring system developed for tangible property and stock claims is applied to claims for livestock and agricultural products (modified as necessary to take into account the nature of the property).

108. The valuation assessment of livestock and agricultural products is based on the method developed by the "D1" Panel for similar claims advanced as "D4 (personal property) claims. 15/ In short, the valuation exercise is designed to determine a 1990 Kuwaiti market value for the lost or damaged livestock or agricultural products. By adopting this approach, the Panel

maintains valuation consistency for similar claims filed on different pages of the category "D" claim form.

F. Cash claims

109. Six claimants in the sixth instalment asserted claims aggregating USD 298,721.00 for loss of cash, defined as a loss of cash held on the business premises resulting from cash transactions made during the ordinary course of business. Loss of the value of currency resulting from the demonetisation of the Kuwaiti dinar is treated under the Invalid Kuwaiti dinar review programme. Loss of currency, where such currency was held as the stock in trade of the business, is treated under the Stock review programme.

1. Compensability

110. Cash claimants are required to prove the existence and their ownership of the cash in question. In the Pilot Group this was typically proved through a detailed statement together with supporting evidence. This evidence included cash books or ledgers showing daily balances of cash-in-hand and financial statements within one year of the date of the invasion showing separately the cash-in-hand balance as at the date of the balance sheet. Other evidence provided by claimants included bank statements showing a sum of cash withdrawn shortly before the invasion or a remittance slip by a creditor of the business confirming that a cash amount was paid to the business on the day before or the day of the invasion.

111. Claimants must also prove loss of the cash as a direct result of Iraq's invasion and occupation of Kuwait. In the Pilot Group this was typically proved by witness statements, police reports, the claimant's statement and other similar documents.

2. Valuation method

112. Where a claim for loss of cash passes the legal test for compensability, the claim proceeds to valuation. Each cash claim is given an evidence score based on the type and quality of evidence provided. To prove the value of the lost cash and thereby build an evidence score, a claimant may provide evidence of the existence and ownership of the business, documents indicating cash level at any one time, third party confirmation of cash held at the date of the invasion and a witness statement regarding the loss.

113. All cash claims are subject to a significant downward adjustment based on the risk of overstatement of cash claims.

G. Invalid Kuwaiti dinars

114. There were no claims in the sixth instalment that asserted loss of the value of currency, that is, losses associated with the demonetisation of Kuwaiti dinars. The Panel finds that should claims for invalidated Kuwaiti dinars be encountered in the context of a D£/D9 business loss, the same approach as currently used by the "D1" Panel will be adopted for determining the compensability and valuation of such losses. 16/

H. Bank accounts or securities in Iraq

115. There were no claims in the sixth instalment that, after reclassification, asserted loss of securities or bank accounts in Iraq, defined as the loss of funds from a bank account held by a business in Iraq. The Panel defers any decision in respect of the compensability or valuation of losses arising from an Iraqi bank account held by a business until such a claim is before it for consideration. The Panel defers any decision in respect of the loss of securities until such a claim is before it for consideration.

I. Bank accounts or securities in Kuwait

116. There were no claims in the sixth instalment that, after reclassification, asserted loss of securities or bank accounts in Kuwait, defined as the loss of funds from a bank account held by a business in Kuwait. The Panel defers any decision in respect of the compensability or valuation of losses arising from a Kuwaiti bank account held by a business until such a claim is before it for consideration. The Panel defers any decision in respect of the loss of securities until such a claim is before it for consideration.

J. Vehicles

117. Twenty-one claimants in the sixth instalment asserted claims aggregating USD 6,699,412.00 for loss of business vehicles, defined as any conveyance for transport used in connection with the business being claimed for. This does not include claims by car dealers with respect to vehicles held for sale; those claims are treated as claims for stock. In addition, this does not include claims for vehicle repair costs, which are treated as incremental costs incurred by the business claimant.

1. Compensability

118. Business vehicle claimants are required to prove the existence and their ownership of the vehicles in question. In the Pilot Group this was typically proved through vehicle registration cancellation certificates ("deregistration" or "drop" certificates) issued by the Government of Kuwait to establish the existence of vehicles before Iraq's invasion of Kuwait and to establish the claimant's ownership interest in those vehicles.

119. Claimants must also prove loss of the business vehicle as a direct result of Iraq's invasion and occupation of Kuwait. The Panel does not accept Kuwaiti deregistration certificates as proof of loss without other evidence, such as witness statements, police reports or post-liberation accounts or business records recording the loss of vehicles. 17/ A causation presumption may arise if a vehicle was left in Iraq or Kuwait prior to or during the invasion and occupation, and was lost, that it was lost as a direct result of Iraq's invasion and occupation of Kuwait. This presumption will only operate where a detailed explanation of the circumstances is provided. 18/

120. The Panel recognises that the legal test for compensability described above is somewhat more strict than the legal test applied for personal vehicles under the D4 (MV) methodology; the Panel considers this more stringent test to be justified in the case of business vehicles.

2. Valuation method

121. Where a claim for loss or destruction of business vehicles passes the legal test for compensability, and the claimant has provided a deregistration certificate, the value of the vehicle is assessed by reference to a motor vehicle valuation table (the "MVV Table"). The MVV Table was provided to the Commission by PAAC. 19/ The Panel notes that the values on the MVV Table were independently verified by valuation experts for the "D1" Panel. 20/

122. The Panel notes that some claimants are not able to provide deregistration certificates. This may be as a result of their absence from Kuwait, or because the vehicle in question was not registered in Kuwait (as in the case of vehicles in Iraq, and some Kuwaiti farm vehicles).

123. In the absence of a deregistration certificate, an evidence score is calculated. This takes into account witness statements provided by the

claimant, documents generated internally by the claimant's business, third party confirmations, and the evidence of value provided by the claimant (including the age of the vehicle, the manufacturer and the model). This evidence score is multiplied by the value appearing on the MVV Table, or by the valuation resulting from the calculation described below.

124. Where the vehicle in question does not appear on the MVV Table, the valuation is assessed by reference to the age, make and model of the vehicle. The Panel arrives at a 1990 market value for the subject vehicle by depreciating or appreciating from known values, in the same manner as established by the "D1" Panel for D4 (MV) claims. 21/

K. Loss of business income claims

125. One hundred and nineteen claimants in the sixth instalment asserted claims aggregating USD 53,669,603.00 for loss of business income, defined as a loss of monies normally received on a periodic basis as the proceeds, earnings or receipts of the business claimed for, excluding monies expected on a contract or series of contracts and money expected as an existing receivable of the business.

1. Compensability

126. Loss of business income claimants are required to prove that the loss was caused as a direct result of Iraq's invasion and occupation of Kuwait. For those claimants with businesses in Kuwait, a causation presumption arises in that businesses located in Kuwait were unable to operate normally during the period of Iraq's occupation. For those claimants with businesses outside of Kuwait, a case by case causation assessment was undertaken by the Panel.

127. Loss of business income claimants are also required to prove that the subject business had a history of profitability, or a reasonable expectation of profitability during the period of loss. In other words, it is not sufficient for the claimant to demonstrate a loss of income alone. The claimant must demonstrate that after expenses are deducted from the revenue of the business, profit existed, or had a reasonable prospect of existing, during the period of loss. In general terms, evidence that the subject business was not profitable in the pre-invasion period, or that the business had no reasonable expectation of profitability, results in this element of the claim not being recommended for compensation. Similarly, a complete lack of information on either the revenues or the expenses of the business results in this element of the claim not being recommended for compensation.

128. As an example of this principle, one claimant claimed for a loss of income from his farming operation. The only evidence of income provided was evidence of the subsidy previously received by the claimant from the Government of Kuwait. No information was provided concerning his pre-invasion farming expenses. In the circumstances, the Panel is unable to determine whether this claimant suffered any net loss of business income as a result of Iraq's invasion and occupation of Kuwait, and this element of the claim is therefore recommended for no compensation. Other farm claims in the sixth instalment have been recommended for compensation for loss of business income where a complete picture of the pre-invasion income (including sale and subsidy income) and expenses of the business were provided.

129. The Panel is also concerned about the issue of potential windfall profits in the post-liberation period in Kuwait. This issue was raised in the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of "E4" Claims" with respect to claimant businesses experiencing profit increases after the liberation of Kuwait:

> "... in some cases, a review of the evidence submitted reveals that there is a high likelihood that a direct cause for the rise in profits was Iraq's invasion and occupation of Kuwait rather than any specific efforts undertaken by the claimant to develop its business. For example, automobile dealerships and construction companies in Kuwait could show such windfall profits in the period immediately following the liberation of Kuwait because the damage caused during the period of the occupation resulted in a sharp increase in demand for the products and services offered by such companies post liberation." 22/

130. As a result of this concern, the Panel requests and reviews post-liberation financial results where businesses resumed operations. Windfall profits were not identified in any sixth instalment claims. As a result, the Panel defers any decision on how to treat such claims pending the identification of a claim presenting such issue.

2. Period of loss

131. Claimants in the sixth instalment seek compensation for loss of business income for varying periods of time. The Panel notes that the sixth instalment claims population includes losses of business income suffered both inside and outside Kuwait, and also losses suffered both by businesses that resumed operations post-liberation and by businesses that never reopened. In this regard, the category "D" business income losses

resemble the loss of profits claims advanced by corporate entities in the "E4" (for businesses in Kuwait) and "E2" (for businesses outside of Kuwait) groups of claims.

132.. The Panel has accordingly been guided in its work by the "period of loss" determinations made by the "E4" and "E2" Panels, as reflected in the "E4" First Instalment Report. 23/ The Panel has also paid particular attention to paragraph 7 of Governing Council decision 15, which states:

> "[I]n the case of a business which has been, or could have been, rebuilt and resumed, compensation would be awarded for the loss from the cessation of trading to the time when trading was, or could have been, resumed. In the case of a business or course of trading which it was not possible to resume, the Commissioners would need to calculate a time limit for compensation for future earnings and profits, taking into account the claimant's duty to mitigate the loss wherever possible."

133. The general principles outlined by the "E2" and "E4" Panels on the period of loss issue may be summarized as follows:

(a) For businesses that continued or resumed operations after the liberation of Kuwait, compensation may be awarded for the period until the claimant did or could have resumed operations at pre-invasion capacity.

(b) For businesses that did not resume operations, compensation may be awarded for the seven month period of Iraq's invasion and occupation of Kuwait. For such claimants to receive compensation for a longer period, they must clearly demonstrate that the period beyond the seven months had as a separate and distinct cause Iraq's invasion and occupation of Kuwait.

134. The Panel is also mindful of the large numbers of category "D" claims for loss of business income, and the resulting difficulty of doing a case by case assessment of the period of loss for businesses in and outside of the affected region. Accordingly, and based on the advice of its expert accounting consultants, the Panel generally applies a 12 month period of loss for business income claimants where the business resumed and the location of the business is Kuwait or Iraq. In cases where a business located in Kuwait or Iraq did not resume after liberation, the Panel imposes a seven month limitation on the period of loss. Similarly, the Panel generally applies a period of loss from 15 January 1991 to 2 March 1991 for business income claimants where the business resumed and the location of the business was other than Kuwait or Iraq. 24/

135. These loss periods are not applied where the claimant can clearly demonstrate an extraordinary reason for a longer period of time needed to resume operations at pre-invasion capacity. An example of this principle in the sixth instalment is a farm claimant who proved that his farm had been land-mined, and that removing the mines had been a lengthy process delaying the resumption of his business. In that circumstance, the Panel fixed an 18 month period of loss for the business income claim. The Panel will continue to review individual claims for such extraordinary circumstances, and where clear evidence is provided by the claimant justifying a longer period of loss, then such evidence will be taken into account by the Panel.

136. The Panel also notes that the period of loss forming the basis of an award cannot, in any circumstance, exceed that advanced by the claimant.

3. Valuation method

137. Where a claim for loss of business income passes the legal test for compensability, the claim proceeds to valuation. Each loss of business income claim is given an evidence score based on the type and quality of evidence submitted.

138. To build an evidence score, a claimant may provide a witness statement describing the income lost and specifying the period of loss, with a detailed explanation of saved business expenses. Documentary evidence considered includes evidence of pre-invasion periodic income and periodic expenses, showing net results for the business. Additional evidence scores may be obtained by proving annual pre-invasion business results, and for providing results for the three years before Iraq's invasion and occupation of Kuwait.

139. A full evidence score is most easily obtained by claimants able to provide pre-invasion financial statements and accounts. However, there was no legal requirement for most unincorporated businesses in Kuwait to prepare such accounts before Iraq's invasion and occupation of Kuwait. Accordingly, it is possible to achieve a full evidence score through alternative evidence proving the pre-invasion receipt of periodic income over time, and proving the periodic expenses of the business for the same period. Such alternative evidence includes management records, profit forecasts, and other similar documents.

140. Large claims for loss of business income with limited financial records are, however, subjected to an evidentiary score penalty if the claimant produces limited financial documentation. This penalty is

designed to minimise the risk of overstatement associated with such claims, where the Panel would expect to see better evidence.

141. The valuation assessment for loss of business income claims is essentially a process of calculating the loss on a periodic basis, and adjusting the loss to the compensable loss period as described above. As with other loss types, the adjusted amount is then multiplied by the evidence score to reach a recommended award.

142. The valuation process for loss of business income claims involves a review of post-invasion results wherever applicable. As noted above, this review is, among other things, designed to identify any claims where windfall profits may have been earned in the post-invasion period. Such claims will be dealt with individually by the Panel.

143. The valuation adjustments described above have had the effect of significantly reducing many of the loss of business income claims advanced in the sixth instalment. Larger adjustments often resulted from restricting the claims to the compensable period. Other adjustments resulted from the limitations of the evidence. If a claimant is, however, able to meet the basic evidentiary requirements for loss of business income, then that portion of the claim will not be adjusted to less than a conservative minimum monthly threshold level, multiplied by the compensable period of loss. In other words, individual claimants proving the existence and ownership of their business, and proving a loss of net business income from that business, will not have their claims reduced to nil based on an application of the various adjustments described above.

L. Contracts

144. Although contract losses are not one of the specified loss types appearing on the D9 page of the claim form, claimants asserted contract losses arising under a number of different fact patterns. Nine claimants in the sixth instalment asserted claims aggregating USD 8,215,027.00 arising from contract losses, defined as any loss of expected income from a contract or a series of contracts to which the claimant or his business was a party.

145. Some of the asserted contract losses were recategorised into either receivables, loss of business income or incremental costs, as the circumstances of loss suggested treatment consistent with these aspects of the D8/D9 methodology. In those cases where a distinct contract loss can be identified, the loss is assessed as follows.

1. Compensability

146. Claimants claiming for contracts that have been cancelled, interrupted or not performed are required to prove that the loss was caused as a direct result of Iraq's invasion and occupation of Kuwait. For those claimants with businesses in Kuwait, a causation presumption arises in that businesses located in Kuwait were unable to operate normally during the period of Iraq's occupation. For those claimants with businesses outside of Kuwait, the Panel undertook a case by case causation assessment.

147. The claimant is required to prove the existence of the contract and its specific terms, including the identity of the parties to the contract, the term, the expected income and expenses from the contract, as well as the details of performance. In the Pilot Group this was typically proved through the contract itself, management or other financial accounts, correspondence between the parties and witness statements.

148. The Panel also considers pre-invasion results to determine whether the contract loss claimed for is consistent with the past performance of the business. In the Pilot Group, pre-invasion management accounts, statements of income and expenses, financial statements, profit forecasts and accountant's reports were considered as evidence of pre-invasion results.

149. Consistent with loss of business income claims, the Panel is also concerned about the issue of potential windfall profits in the post-liberation period arising in contract loss claims. As a result of this concern, the Panel requests and reviews post-liberation financial results where businesses resumed operations. Windfall profits arising from contract loss claims were not identified in any sixth instalment claims. As a result, the Panel defers any decision on how to treat such claims pending the identification of a claim presenting such issue.

2. Period of loss

150. Claimants in the sixth instalment seek compensation for contracts with varying terms. The Panel notes that the sixth instalment claims population includes contract losses suffered both inside and outside Kuwait, and also losses suffered both by businesses that resumed operations post-liberation and by those that did not. In this regard, the category "D" contract losses resemble the loss of business income claims.

151. Because the valuation method considers the remaining term of the contract in arriving at the recommended award, the Panel considers whether

similar periods of loss should apply for contract losses and for loss of business income. In cases where the business did not resume after liberation, the Panel imposes a similar seven month limitation on the period of loss. Where the business resumed, a period of up to 12 months may be recommended. In the Pilot Group, no claimant demonstrated extraordinary circumstances justifying an indemnity period longer than 12 months.

152. The Panel also notes that the period of loss forming the basis of an award cannot, in any circumstance, exceed that advanced by the claimant.

3. Valuation method

153. Where a claim for a contract loss passes the legal test for compensability, the claim proceeds to valuation. Each contract loss is given an evidence score based upon the type and quality of evidence provided. To prove the value of the contract loss and thereby build an evidence score, a claimant may provide a witness statement setting out expected revenue from the contract, the contract term and details of expenses, management accounts, financial statements, profit forecasts and accountant's reports showing either periodic or annual results.

154. If the claimant cannot provide this type of periodic information, the claimant may build an evidence score through the provision of the contract itself, payment vouchers or other proof of payment and correspondence between the parties referring to the terms of the contract and the details of performance. Where the Panel considers the value of the loss claimed to be significant, and the claimant has failed to provide the appropriate periodic financial information, an adjustment is applied to the claim to account for the risk of overstatement.

155. Valuation of contract loss is based on multiplying the net monthly income expected from the contract against the remaining term of the contract. Where the claimant has not clearly demonstrated the proportion of the contract completed or the time elapsed on the contract, the Panel assumes that the contract is half way through its term and the appropriate adjustment is applied. As described under Period of loss, above, the remaining term of the contract is limited to up to seven months for a business that did not resume after the liberation of Kuwait and up to 12 months for those that did resume.

156. The calculated unbilled portion of the contract is then compared against the amount based on the time remaining in the contract term and the

lower of the two is multiplied against the evidence score to generate the recommended award.

M. Receivables

157. Twenty-two claimants in the sixth instalment asserted claims aggregating USD 5,734,660.00 for receivables, defined as losses suffered as a result of the inability of a business to collect an outstanding amount owing to it.

158. The receivables claims in the sixth instalment may be divided into two basic types of claims.

159. The first type of claim is filed by claimants who are owed significant amounts of money under the terms of a specific contract for the sale of goods or services that was partially or fully performed before Iraq's invasion and occupation of Kuwait. An example of such a claim is a construction contractor who is owed money for partial performance under specific construction contracts that were interrupted as a result of Iraq's invasion and occupation of Kuwait.

160. This type of claim will generally be supported by documentation of the specific transaction that gave rise to the debt and will include some documented efforts to collect money owed, usually in the form of correspondence with the debtor.

161. The second type of receivables claim is asserted by merchants in Kuwait who sold goods on credit to their customers before Iraq's invasion and occupation of Kuwait. An example of such a claim is an electronics retailer who sold electronic goods by instalment payments and had, at the time of the invasion, a list of debtors in good standing who were making payments on purchases. Another example is a claim made by a food wholesaler who made weekly deliveries to local grocers on account. These types of claims will generally have detailed documentation regarding the numerous, usually small, debts owed by their clientele.

162. This second type of claim is unlikely to be supported by documented debt collection efforts for each individual debtor. The best evidence of debt collection efforts likely to be provided in support of these claims is evidence that a debt collector was hired and documentation regarding any debts that were collected. Even claimants who hired debt collectors were largely unsuccessful in their debt collection efforts as the non-Kuwaiti clients (who accounted for the majority of the debtor population in the Pilot Group of claims) had left Kuwait after the invasion.

163. The compensability of receivables claims is an issue that has been the subject of a decision by the "E4" Panel. 25/ It is worth noting that the majority of sixth instalment receivables claims appear to differ significantly in type from the receivables claims filed in the "E4" group of claims.

164. The reported "E4" receivables claims were for debts owed to Kuwaiti corporations. The size of the average receivables claim exceeded USD 500,000. 26/ The debts were owed by businesses, whether incorporated or unincorporated.

165. In contrast, the majority of sixth instalment receivables claims are filed by non-Kuwaiti claimants who operated unincorporated businesses in Kuwait. Their claims are typically for a large number of small debts owed by their primarily non-Kuwaiti customers, usually individuals, who are likely to have left Kuwait after the invasion.

1. Compensability

166. Receivables claimants are required to prove the existence and their ownership of the receivable in question. In the Pilot Group this was typically proved through promissory notes, post-dated cheques, contracts with future payment obligations, repayment schedules, invoices, loan documentation, detailed lists of debtors and debts, unaudited or audited business records containing information regarding outstanding debts, witness statements and correspondence with debtors.

167. Claimants are also required to prove that the receivable was uncollectable as a direct result of the invasion and occupation of Kuwait.

168. Based on the review of claims, it appears that before Iraq's invasion and occupation of Kuwait, many merchants in Kuwait offered credit sales to their customers and successfully collected on these debts. Iraq's invasion and occupation of Kuwait drastically interfered with the regular payment of debts that merchants had previously experienced. Iraq's invasion and occupation of Kuwait also resulted in the scattering of customers around the world and often the destruction or loss of the documents that contained detailed information regarding the identity of the debtor and the amounts owed.

169. The Panel had to determine what proof could reasonably be required of D8/D9 claimants in order to demonstrate that a debt became uncollectable as a direct result of Iraq's invasion and occupation of Kuwait.

170. The "E4" Panel has previously considered the question of how a claimant may demonstrate that a particular receivable was uncollectable as a direct result of Iraq's invasion and occupation of Kuwait. 27/ The "E4" Panel requires a claimant to provide evidence of formal debt collection efforts in order to make this showing. The "E4" Panel looks for documents such as court records showing debt collection efforts in Kuwaiti courts; court records demonstrating the debtor's absence from Kuwait at the end of the invasion period; Kuwait Chamber of Commerce and Industry certificates stating that a company did not resume operations after the invasion period; and certificates from the Kuwait Ministry of Labour and Social Affairs stating that a debtor had been declared bankrupt following the invasion. If no formal debt collection attempts have been documented, and no reasonable explanation given for why attempts have not been made, no compensation is recommended.

171. The Panel adopts the general approach of the "E4" Panel with respect to the compensability of receivables claims. The Panel, however, considers that a reasonable explanation for a failure to document individualised debt collection efforts is that the size of the debt was too small to warrant the expense of extensive debt collection efforts. Although claimants are required to mitigate their losses, reasonable mitigation efforts should not include debt collection efforts that are more costly than the amount of the underlying debt.

172. The Panel determines that for debts greater than KWD 500, a debt is considered non-compensable if the claimant fails to document adequate debt collection efforts. If the debt is for KWD 500 or less, a claim will be compensable, subject to remaining legal and valuation issues, even if a claimant has not documented debt collection efforts.

173. The Panel adopts this approach based on its findings regarding the specific characteristics of the receivables claims in the sixth instalment.

174. For debts over KWD 500, the fact that a debt was uncollectable as a direct result of the invasion and occupation of Kuwait would be proven by the same type of documents required by the "E4" Panel. These documents may include the claimant's statement; witness statements; information regarding the collectability of a business' debts before the invasion; information regarding the age of the debt; letters or other documents showing debt collection efforts; documents showing that a debtor did not resume operations after the invasion and occupation of Kuwait; certificates from the Kuwait Ministry of Commerce and Industry, Directorate of Commercial Registration, stating a business did not resume operations after the invasion and occupation of Kuwait; court records of debt collection proceedings; and bankruptcy notices.

175. No claimant in the sixth instalment was able to demonstrate formal debt collection efforts for receivables over KWD 500. Accordingly, for all claims of this type, the Panel recommends no award of compensation.

176. For debts of all sizes, it is necessary to determine whether there is evidence that suggests that the debt was uncollectable prior to the invasion of Kuwait. If such evidence exists, the Panel recommends no award of compensation.

2. Valuation method

177. Where a receivables claim passes the legal test for compensability, the claim proceeds to valuation. Each of the three types of receivables claims (debts less than or equal to KWD 500, debts greater than KWD 500, and debts owed by an Iraqi party) are valued differently.

178. Debts less than or equal to KWD 500 are given an evidence score based on the type and quality of evidence provided. To prove the loss, and thereby build an evidence score, a claimant may provide evidence of the existence and his ownership of the business, evidence of debts in the aggregate, evidence of debts broken down by debtor, information regarding the business' historic treatment of bad and doubtful debts, information regarding the age of each debt, evidence of formal and informal debt collection efforts, circumstantial and conclusive evidence of the value of the debt, a witness statement regarding the debts owed and other similar documents.

179. In addition, claims for receivables equal to or less than KWD 500 are subject to valuation adjustments based on inconsistent evidence in the claim file and for a failure to apply a bad debt provision in calculating the amount of the loss.

180. Debts greater than KWD 500 are given an evidence score based on the type and quality of evidence provided. Similar evidence is used to build an evidence score, though the claimant is given no evidentiary credit for showing formal debt collection efforts, as such a showing was required to pass the legal review. These claims are subject to the same valuation adjustments based on contradictory evidence of value in the claim file and are subject to the downward adjustments applied by the "E4" Panel for failure to show that a debtor was bankrupt or insolvent as a direct result of Iraq's invasion and occupation of Kuwait. No claim in the sixth instalment has been valued under the greater than KWD 500 valuation method as all such claims failed the legal review.

181. Claims for receivables owed by Iraqi parties are subject to a different legal test. The Panel adopts the general principles with respect to these receivables as set forth in "E2" Fourth Instalment Panel Report. 28/

182. As no claim for receivables owed by an Iraqi party passed the legal review for compensability, the Panel defers any detailed discussion of the compensability or valuation of losses arising from receivables owed by an Iraqi party until a compensable claim is before it for consideration.

N. Rent-a-Permit claims

183. Two claimants in the sixth instalment asserted claims aggregating USD 158,477.00 for loss of rental income based on rent-a-permit arrangements. "Rent-a-permit" arrangements were first considered by the category "C" Panel in its first and seventh reports. 29/ The category "C" Panel noted that the most common form of business in Kuwait was the sole proprietorship, primarily used by small businesses, which had no separate legal identity. In the period prior to Iraq's invasion, Kuwaiti law required that a person who wished to start a business obtain a permit from the Ministry of Commerce and Industry. In principle, only Kuwaiti nationals qualified for such a permit. The category "C" Panel took note of the existence of a common practice whereby a person who wished to undertake commercial activities rented a permit from the Kuwaiti permit owner. 30/

184. The Panel notes that the observations of the category "C" Panel with regard to the rental of business permits also applies to many of the D8/D9 claims. This means that many of the individual business losses filed by non-Kuwaiti claimants in category "D" are businesses operated under a rent-a-permit arrangement. It also means that there are a significant number of claims by the permit owner for the loss of rent associated with the rent-a permit arrangement. It is this latter type of claim, including claims for the loss of rental income derived from a business permit that has been rented to a third party, that is discussed in this section.

1. Compensability

185. As in the case of loss of business income claimants, rent-a-permit claimants are required to prove that the loss of rent was a direct result of Iraq's invasion and occupation of Kuwait. Similar causation presumptions also apply. Thus, a rent-a-permit claimant with a business located in Kuwait is presumed to have been unable to collect past-due rents during the period of Iraq's occupation of Kuwait.

186. Rent-a-permit claimants are required to satisfy two legal tests; failure to satisfy either one results in failure of the claim. First, like other business loss claimants, rent-a-permit claimants are required to establish, either through circumstantial or conclusive evidence, the existence of the underlying business that was the subject of the rent-a-permit arrangement.

187. Second, rent-a-permit claimants are required to establish the existence of the rent-a-permit arrangement by submitting any of the following documents: (1) an agreement evidencing the rental of the business permit dated prior to the date of Iraq's invasion of Kuwait (the "rent-a-permit contract"); (2) a pre-invasion statement from the claimant that acknowledges the fact that he had rented the business permit to a permit renter and that he had no interest in the capital of the business; or (3) the business permit and either (a) a post-invasion statement from the permit renter that confirms the rent-a-permit arrangement as alleged by the claimant, or (b) a pre-invasion receipt or invoice that evidences payment of the monthly rent.

188. In the Pilot Group, rent-a-permit claimants were able to establish these legal requirements by providing a copy of the business permit, the contract establishing the rent-a-permit arrangement, or invoices relating to this arrangement.

2. Period of loss

189. Rent-a-permit claimants in the Pilot Group seek compensation for loss of rental income for varying periods of time. While all of the underlying businesses were located inside Kuwait, not all of the underlying businesses resumed operations after the liberation of Kuwait.

190. For rent-a-permit claims, the Panel applies the same legal analysis for the determination of the period of loss as in the case of loss of business income claims. Accordingly, where the rent-a-permit arrangement resumed after Kuwait's liberation, the Panel recommends a loss period of up to 12 months. If the underlying business did not resume operations, however, the Panel recommends a loss period of up to seven months. No claimant alleged extraordinary circumstances justifying a loss period greater than 12 months.

3. Valuation method

191. If the rent-a-permit claim passes the legal tests for compensability, the claim proceeds to valuation. Rent-a-permit claims are given an

evidence score based on circumstantial or conclusive evidence of the existence of the rent-a-permit arrangement and the fact that rent payments were made pursuant to this arrangement. As to the existence of the rent-a-permit arrangement, a claimant receives an evidentiary score for submitting the pre-invasion rent-a-permit contract, the claimant's pre-invasion statement acknowledging the rent-a-permit arrangement, or the business permit coupled with either a post-invasion statement from the permit renter that confirms the rent-a-permit arrangement, or a pre-invasion receipt or invoice that evidences payment of the monthly rent.

192. With respect to proving the fact of rent payment under the rent-a-permit arrangement, a claimant receives an evidentiary score for submitting a pre-invasion invoice or receipt evidencing such payment. No evidentiary score is given if any of the foregoing documentation is dated more than five years from the date of Iraq's invasion of Kuwait.

193. In addition, rent-a-permit claims are subject to valuation adjustments if contradictory evidence is present on the claim file or if the claimant fails to account for saved expenses relating to the rent-a-permit arrangement.

O. Goodwill/Key Money claims

194. Fourteen claimants in the sixth instalment asserted claims aggregating USD 1,748,315.00 for key money, defined as losses associated with the money paid for the right to lease a business premises. Twelve claimants in the sixth instalment asserted claims aggregating USD 1,758,428.00 for goodwill, defined as the loss of value of the reputation of a business.

1. Compensability

195. Key money and goodwill claimants are required to prove the existence and their ownership of the asset in question. In the Pilot Group this was typically proved through lease documents reflecting key money payments made, receipts showing payment of key money, unaudited or audited business records containing information regarding key money and goodwill paid, sale or offer documents indicating the amount of the purchase price expressly allocated to key money or goodwill and witness statements.

196. Claimants must also prove that the key money and goodwill was lost as a direct result of Iraq's invasion and occupation of Kuwait. In the Pilot Group this was typically proved by witness statements, information regarding damage done to business premises for which the key money or

goodwill was paid, information regarding the resale value of the key money and goodwill in the post-invasion period and the claimant's statement.

197. As part of the legal review, the Panel also requires the claimant to provide evidence of efforts to mitigate the key money or goodwill loss. Such evidence includes documents demonstrating efforts made to recover key money payments from the original landlord, documents showing attempts to sell the war-damaged business, documents showing the appointment of an agent to sell the war-damaged business, documents showing that any portion of the key money was actually recovered, and other similar documents. If the claimant provides such evidence and meets all other legal requirements, the claim proceeds to valuation. If the claimant does not provide such evidence, the amount claimed is subject to a significant downward adjustment before the claim proceeds to valuation.

198. The review also assesses whether any aspect of the key money or goodwill claim is unduly speculative. This legal test focuses on claims for goodwill or key money that are not documented by reference to an historical expenditure or other verifiable evidence of value. For example, a claimant who asserts that his business had goodwill valued at KWD 10,000 but has provided no documentary evidence indicating the value of the goodwill will be awarded no compensation as the claim will be considered unduly speculative. Similarly, a claim for appreciation on key money paid will also be considered unduly speculative and non-compensable unless the claimant can provide evidence sufficient to demonstrate the amount of the appreciation.

2. Valuation method

199. Where a claim for key money or goodwill passes the legal test for compensability, the claim proceeds to valuation. Each such claim is given an evidence score based on the type and quality of evidence provided.

200. To prove the value of key money or goodwill and thereby build an evidence score, a claimant may provide evidence of the existence and ownership of the business, information regarding the historic cost of obtaining the key money or goodwill of the business, internally generated documents showing key money or goodwill payments made, offers to buy the business that contain an allocated amount for key money or goodwill, third party confirmations of key money or goodwill payments, a witness statement regarding the loss and other similar documents.

P. Incremental costs

201. Twenty claimants in the sixth instalment asserted claims aggregating USD 4,071,821.00 for incremental costs, defined as business expenses that would not have been incurred if Iraq's invasion and occupation of Kuwait had not taken place. These claims comprise costs such as post-liberation financing costs, repairs to tangible property, clean up and restart costs. This does not include claims for repairs to real property, which are treated under the Real Property Repair review programme.

1. Compensability

202. Incremental costs claimants are required to prove that the costs claimed were incurred as a direct result of Iraq's invasion and occupation of Kuwait. Further, these costs were typically incurred post-liberation, or were incurred outside of Kuwait or Iraq. Accordingly, the Panel requires proof that the incremental costs were actually incurred in the amounts stated by the claimants.

2. Valuation method

203. Given the nature of incremental costs claims, no streaming is undertaken for these losses. All incremental cost claims are valued in the same manner, and no evidentiary score is provided for submitting proof of the existence of the business.

204. The evidentiary scoring for incremental costs claims is based on documents confirming the responsibility for a compensable expense, documents confirming that the expense was actually incurred and specific witness statements. In addition, the Panel looks to documents confirming that the actual incremental costs were incurred (such as invoices and receipts) and documents confirming that the expenses were incurred within a reasonable period of time.

205. The Panel recognises that a business operating normally would incur repair and maintenance costs as part of its regular activities. Accordingly, most incremental cost claims include an element of cost that would have been incurred even if Iraq's invasion and occupation of Kuwait had not taken place. In the circumstances, and as the Panel cannot make a claim by claim assessment of this over-statement, a risk adjustment is applied to claims for incremental costs. The Panel is satisfied that this adjustment is conservative and appropriate in the circumstances.

206. The Panel is concerned that claims for incremental costs should not duplicate other losses advanced by the same claimant (for example, decline in income claims). The incremental costs valuation methodology is designed to ensure that duplication is identified and eliminated from the Panel's recommended awards.

V. CROSS CATEGORY ISSUES

A. Overlap with category "E4" claims

207. Prior to deferral, there were 13 claims in the sixth instalment filed by non-Kuwaiti (mostly Jordanian) shareholders of Kuwaiti corporations where there was also an overlapping claim filed with the Commission by the corporation in the "E4" group of claims. As with the "stand alone" claims described at paragraphs 211 to 213 below, these claims all relate to losses suffered by Kuwaiti W.L.L. enterprises. The distinguishing feature of these shareholder claims is the overlapping claim filed in the "E4" group of claims.

208. Some of these overlapping shareholder claims are advanced by claimants who assert legal ownership of a minority interest in the corporate entity that suffered the loss. These claimants typically assert a complete breakdown of the relationship with their Kuwaiti partner (and majority shareholder), and that a portion of the corporate loss ought to be paid directly to them.

209. Some of these overlapping shareholders claims are advanced by claimants who assert beneficial ownership of the entire corporate entity suffering the loss, through "side agreements" executed by the Kuwaiti and non-Kuwaiti shareholders, or based on written declarations signed by the Kuwaiti shareholder. These claimants typically assert that the Kuwaiti partner was a shareholder only for the purpose of compliance with Kuwaiti law, and that any award for this loss ought to be paid entirely to the non-Kuwaiti shareholder.

210. The Panel has initiated an investigation of the nature and scope of this claims overlap problem, in co-operation with the "E4" and "E4A" Panels. Pending the results of the investigation, and the receipt of guidance from the Governing Council, the Panel has decided to defer all 13 claims in the sixth instalment submitted by shareholders of Kuwaiti W.L.L. entities where there is a competing "E4" claim.

B. Other claims filed by shareholders

211. Prior to deferral, there were 17 claims in the sixth instalment filed by non-Kuwaiti (mostly Jordanian) shareholders of Kuwaiti corporations where there was no overlapping claim filed with the Commission by the corporation in the "E4" group of claims (the "stand alone" shareholder claims). These claims all relate to losses suffered by Kuwaiti W.L.L. enterprises. The distinguishing feature of these shareholder claims is the absence of an overlapping claim filed in the "E4" group of claims.

212. Almost all of these stand alone shareholder claims are advanced by claimants who assert beneficial ownership of the entire corporate entity suffering the loss, through side agreements executed by the Kuwaiti and non-Kuwaiti shareholders, or declarations of the Kuwaiti partner. These claimants assert that the Kuwaiti partner was a shareholder only for the purpose of compliance with Kuwaiti law, and that they are accordingly justified in advancing the only claim with respect to the underlying loss.

213. The Panel has initiated an investigation of the pre-invasion legal system and business practices in Kuwait. The Panel also considers that the problem of the stand alone shareholder claims is related to the overlapping claims problem described above. Pending the results of its investigations, and the receipt of guidance from the Governing Council, the Panel has decided to defer all stand alone shareholder claims in the sixth instalment.

C. Deductions of category "A", "B" and "C" awards

214. Recommended awards in respect of claims in this instalment are reported net of necessary deductions of category "A", "B" and "C" approved awards. 31/

215. For each category "C" award, the Panel compares the "C8" claim with the D8/D9 claim to determine if there is any duplication between the claims. If there is no duplication, no deduction is made.

216. Where duplication exists between the "C8" and D8/D9 claims, the Panel assesses whether the D8/D9 claim is a "spillover" claim, meaning that the claimant claimed the first USD 100,000 of his business loss in category "C", and the balance in category "D". In that case, the total loss is valued in category "D", and the "C8" award is deducted.

217. If there is duplication between the "C8" and the D8/D9 claims, and the D8/D9 claim is not a spillover claim, the Panel assesses whether the claims are "partial duplicates". In these cases, the claimant attempted to divide their losses between categories "C" and "D", but some element of overlap remains. In that case, the Panel identifies the element of overlap in the "C8" claim, and deducts an amount calculated to reflect the extent of the overlap.

218. In a few cases, the "C8" and D8/D9 claims were "full duplicates", meaning that the claim files (including amounts claimed) are identical. In those cases, if the total "C" award was less than USD 100,000, the Panel considered that the entire business loss was valued in category "C". Accordingly, the D8/D9 claim would be recommended for no award.

219. On the other hand, if the claims are full duplicates and category "C" capped the award at USD 100,000, then the entire loss is valued in category "D", and the "C8" award is deducted.

220. In some cases, the deduction of a category "C" award is in fact a deduction of a pro-rated amount. This occurs where there are multiple category "C" loss elements, and the "C" award was capped at USD 100,000. In such cases, the "C" award is pro-rated back to the "C" loss elements to reach an amount that can be deducted from the corresponding category "D" award.

VI. OTHER ISSUES

A. Applicable dates for currency exchange rate

221. Most category "D" business loss claimants have asserted their claims in Kuwaiti dinars. However, some claimants have asserted claims in other currencies as well. The Commission issues its awards in United States dollars, and so the Panel must determine the appropriate exchange rate to apply to losses or claims expressed in Kuwaiti dinars and other currencies.

222. The Panel finds that it is not possible to calculate the exchange rate separately for each individual business loss element or individual business loss claim. The Panel adopts the reasoning of the "D1" Panel on this issue, and finds that the currency exchange rates to be applied for processing and paying category "D" individual business loss claims are the same rates used for other category "D" losses. 32/

223. In short, for claims stated in Kuwaiti dinars, the currency exchange rate to be applied is the rate of exchange in effect immediately prior to

Iraq's invasion and occupation of Kuwait (1 August 1990) for converting Kuwaiti dinars into United States dollars.

224. For claims stated in currencies other than Kuwaiti dinars or United States dollars, the currency exchange rate to be applied is the average rate in effect for the month of August 1990 for converting those currencies into United States dollars. 33/

B. Applicable dates for interest

225. In decision 16, the Governing Council specified that "Interest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award."

226. For category "D" loss types other than individual business losses, the "D1" Panel has decided that "the date the loss occurred" under Governing Council decision 16 is a single fixed date, being 2 August 1990 (the date of Iraq's invasion and occupation of Kuwait). 34/ The Panel adopts this finding for all category "D" individual business loss elements, with the exception of loss of business income, incremental costs and real property rental income claims.

227. Category "D" claims for loss of business income are for losses of income that would have been earned over a period of time. As such, an interest start date of 2 August 1990 for such losses would result in over-compensation for claimants. The Panel accordingly adopts the midpoint of the period for which loss of business income claims have been recommended for compensation as the date of loss for the purpose of calculating interest. 35/

228. Category "D" claims for incremental costs are for extraordinary business expenses that would not have been incurred if Iraq's invasion and occupation of Kuwait had not taken place. Examples of incremental costs claims are post-liberation financing, repair and clean-up costs, all of which would have been incurred post-liberation. The Panel recognises the difficulty of tracking different interest start dates for each incremental costs claim in category "D", given the large number of claims involved. After a review of the incremental costs claims in the sixth instalment, the Panel accordingly adopts a fixed date of 1 May 1991 as the date of loss for the purpose of calculating interest on incremental costs awards in category "D".

229. No individual business claims in the sixth instalment passed the legal tests for compensability for real property rental income. Accordingly, the Panel makes no finding with respect to the date of loss for the purpose of calculating interest for such claims.

C. Claim preparation costs

230. A number of category "D" individual business loss claimants have made claims for claim preparation costs incurred by them, either in amounts specified on the claim form or in more general terms.

231. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel makes no recommendation with respect to compensation for claim preparation costs.

VII. RECOMMENDED AWARDS

232. A summary of the claimed amounts and the Panel's recommended compensation for each claim appears in Tables 2 and 3, below.

Geneva, 31 August 2000

(Signed) K. Hossain
Chairman

(Signed) N. Elaraby
Commissioner

(Signed) I. Suzuki
Commissioner

A. Recommended awards by submitting entity

Table 2. Summary of recommended awards by submitting entity

Submitting entity	Amount claimed (USD)	Number of claims recommended	Number of claims not recommended for payment	Amount of compensation (USD)	C deduction	Net compensation (USD)
Australia	203,416.00	-	1	0.00		0.00
Bahrain	1,725,535.00	2	2	44,330.00		44,330.00
Belgium	1,122,554.00	1	1	398,651.00	(44,916)	353,735.00
Canada	1,699,792.00	3	-	467,259.00		467,269.00
Cyprus	203,160.00	-	1	0.00		0.00
France	1,293,766.00	-	2	0.00		0.00
India	32,872.00	1	-	6,758.00		6,758.00
Israel	154,000.00	-	1	54,854.00	(54,854)	0.00
Jordan	23,392,715.00	31	3	8,472,879.00	(744,925)	7,727,954.00
Kuwait	46,131,770.00	92	6	25,719,758.00	(30,000)	25,689,758.00
Netherlands (the)	36,252,341.00	-	3	0.00		0.00
Pakistan	696,508.00	2	1	164,796.00	(23,166)	141,630.00
Saudi Arabia	7,250,821.00	1	1	46,126.00		46,126.00
Sudan	17,436.00	1	-	11,582.00		11,582.00
Syria	3,746,252.00	3	-	1,306,459.00		1,306,459.00
United Kingdom	9,021,666.00	3	1	1,123,223.00		1,123,223.00
United States	11,463,904.00	2	1	5,712,495.00		5,712,495.00
Yemen	2,210,513.00	5	-	841,164.00	(137,998)	703,166.00
UNDP (Washington)	313,785.00	1	-	202,287.00		202,287.00
Total	146,932,806.00	148	24	44,572,631.00	(1,035,859)	43,536,772.00

B. Recommended awards by D8/D9 loss element

Table 3. Summary of recommended awards by loss element

Level 2 loss element		Amount claimed (USD)	Number of claims recommended	Number of claims not recommended for payment	Amount of compensation (USD)
1	Real Property	3,065,734.00	9	1	1,323,221.00
2	Tangible Property	12,938,424.00	88	7	5,557,943.00
3	Stock	44,489,003.00	106	5	25,558,374.00
4	Livestock & Agricultural Products	1,650,740.00	5	-	524,934.00
5	Cash	298,721.00	5	1	58,323.00
6	Invalid Kuwaiti dinar	-	-	-	-
7	Bank Accounts and Securities	-	-	-	-
8	Vehicles	6,699,412.00	20	1	1,411,336.00
9	Business Income	53,669,603.00	102	17	8,227,879.00
10	Contracts	8,215,027.00	5	4	489,049.00
11	Receivables	5,734,660.00	9	13	123,407.00
12	Rent-a-Permit	158,477.00	2	-	58,581.00
13	Other	734,392.00	-	11	-
14	Goodwill	1,758,428.00	8	4	112,215.00
15	Key Money	1,748,315.00	14	-	694,589.00
16	Incremental Costs	4,071,821.00	14	6	483,280.00
17	Claim Prep. Costs	757,381.00	-	22	-
18	Interest	942,668.00	-	6	-
	Less: Compensation received from another source				(50,500.00)
	Total	146,932,806.00			44,572,631.00
	Less: C Deductions				(1,035,859.00)
	Net of C Deductions				43,536,772.00
	Net of Interest & Claim Prep. Costs	145,232,757.00			43,536,772.00

Notes

1/ A small number of claims in the sixth instalment included loss types other than individual business losses. This was as a result of the recategorisation of losses originally filed as individual business losses.

2/ The "E2" group of claims is defined as all claims filed in category "E" excluding those filed by Kuwaiti corporations, oil companies, construction/engineering companies and import/export companies; see S/AC.26/1998/7 at para. 3.

3/ One claimant advanced claims for two businesses on the same claim form, one a proprietorship and the other an incorporated business. The latter claim was severed from the former and deferred along with the other shareholder claims in the sixth instalment. The proprietorship was retained and valued in the sixth instalment.

4/ Some category "D" claims are for amounts less than USD 100,000. These claims have been properly filed in category "D" because they are for losses in excess of amounts claimed under claim forms B or C, or for losses relating to payments made or relief provided to others, pursuant to Governing Council decision 7 (S/AC.26/1991/7/Rev. 1).

5/ S/Res/687 (1991), para. 16.

6/ S/AC.26/1992/9.

7/ S/AC.26/1992/15, paras. 5 and 10.

8/ S/AC.26/1992/7, para. 6.

9/ S/AC.26/1992/15, para. 6.

10/ S/AC.26/1992/15, para. 9.

11/ Nationals of Organisation for Economic Co-operation and Development (OECD) countries include citizens of the following nations: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.

12/ S/AC.26/1999/6 at paras. 108-112.

13/ See the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the Fourth Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" S/AC.26/2000/11 ("Part Two of the 'D1' Fourth Instalment Report").

14/ Part Two of the "D1" Fourth Instalment Report at para. 55.

15/ See paras. 45-50 of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" S/AC.26/1998/15 ("Part Two of the 'D1' Second Instalment Report").

16/ See Part Two of the "D1" Second Instalment Report at paras. 26-28 for the "D1" Panel approach.

17/ See the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of "E4" Claims" S/AC.26/1999/4 at para. 133 (the "First Instalment 'E4' Report").

18/ See the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims) S/AC.26/1998/1 at para. 266 ("Part One of the 'D1' First Instalment Report").

19/ This is consistent with the practice of other Panels; see the First E4 Panel Report and Part One of the "D1" First Instalment Report.

20/ Part One of the "D1" Fourth Instalment Report, paras. 267-269.

21/ See para. 16 of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Fourth Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" S/AC.26/1999/21 ("Part 1 of the 'D1' Fourth Instalment Report").

22/ First Instalment "E4" Report, para. 178.

23/ First Instalment "E4" Report, paras. 182-187.

24/ See para. 77 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of 'E2' Claims" S/AC.26/1999/22.

25/ See the First Instalment "E4" Report, paras. 207-219.

26/ See, for example, the First Instalment "E4" Report, para. 207 ("Nine claimants in this instalment asserted claims for uncollectible receivables or "bad debts" aggregating over K.D. 3.9 million (approximately USD 13.5 million); S/AC.26/1999/17, para. 86 ("the Second Instalment 'E4' Report") (30 claimants asserting receivables claims aggregating USD 17,286.325); S/AC.26/1999/18, para. 78 ("the Fourth Instalment 'E4' Report") (33 claimants asserting receivables claims aggregating USD 18,564,827).

27/ See the First Instalment "E4" Report, para. 214.

28/ See generally, the "Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of "E2" Claims" S/AC.26/2000/2 ("the Fourth Instalment 'E2' Report").

29/ S/AC.26/1994/3 (the "First Instalment 'C' Report") and S/AC.26/1999/11 (the "Seventh Instalment 'C' Report").

30/ See the Seventh Instalment "C" Report, para. 331.

31/ See Part One of the "D1" Fourth Instalment Report, para. 21.

32/ See Part One of the "D1" First Instalment Report, paras. 61-63.

33/ The exchange rate used for currencies other than the United States dollar or Kuwaiti dinar is the average monthly rate for such currencies as reported in the United Nations Monthly Bulletin of Statistics, vol. XLV No. 4, April 1991 (ST/ESA/STAT/SER.1/220).

34/ See Part One of the D1 Fourth Instalment Report, paras. 64-65.

35/ This is consistent with the practice of other panels; see for example the First Instalment "E4" Report, para. 230.

Annex II

Decision concerning the sixth instalment of individual claims for damages above USD 100,000 (category "D" claims) taken by the Governing Council of the United Nations Compensation Commission at its 101st meeting, held on 7 December 2000 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the sixth instalment of individual claims for damages above USD 100,000 (category "D" claims), covering 172 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country or international organization, based on the recommendations contained in table 2 of the report, are as follows:

* Previously issued as document S/AC.26/Dec.110 (2000).

1/ The text of the report appears in document S/AC.26/2000/24 (annex I above). In conformity with the provisions on confidentiality in the Rules (art. 30, para. 1, and art. 40, para. 5), information concerning the amount to be paid to each individual claimant will not be made public, but will be provided to each respective Government or international organization separately.

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Australia	-	1	203,416	nil
Bahrain	2	2	1,725,535	44,330
Belgium	1	1	1,122,554	353,735
Canada	3	-	1,699,792	467,269
Cyprus	-	1	203,160	nil
France	-	2	1,293,766	nil
India	1	-	32,872	6,758
Israel	-	1	154,000	nil
Jordan	31	3	23,392,715	7,727,954
Kuwait	92	6	46,131,770	25,689,758
Netherlands	-	3	36,252,341	nil
Pakistan	2	1	696,508	141,630
Saudi Arabia	1	1	7,250,821	46,126
Sudan	1	-	17,436	11,582
Syrian Arab Republic	3	-	3,746,252	1,306,459
United Kingdom	3	1	9,021,666	1,123,223
United States	2	1	11,463,904	5,712,495
Yemen	5	-	2,210,513	703,166
UNDP Washington	1	-	313,785	202,287
Total	148	24	146,932,806	43,536,772

3. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)).

4. Recalls that when payments are made in accordance with decision 100 and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Governments and international organizations shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution.

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government and international organization.

Annex III

Report and recommendations made by the D1 Panel of Commissioners concerning the seventh instalment of individual claims for damages above USD 100,000 (category D claims)*

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* Previously issued as document S/AC.26/2000/25

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Introduction

1. This is the tenth report to the Governing Council of the United Nations Compensation Commission (the "Commission") submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules"), by the "D1" Panel of Commissioners (the "Panel"), being one of two Panels appointed to review individual claims for damages above USD 100,000 (category "D" claims). 1/ This report contains the determinations and recommendations of the Panel in respect of the seventh instalment, comprising 602 category "D" claims, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 28 January 2000.

2. Almost all 602 claims in the instalment contain loss types for which methodologies have already been developed ("application claims"). 2/ The Panel began its review of the seventh instalment on 28 January 2000. In addition to regular communications among the Commissioners and with the Secretariat, the Panel held meetings at the Commission's headquarters in Geneva to consider the claims on the following dates: 27-29 January 2000, 6-8 March 2000, 1-3 May 2000, 3-4 July 2000 and 31 July-3 August 2000. It also met with the "D2" Panel in January 2000.

I. BACKGROUND

A. Background information

3. The factual background relating to Iraq's invasion and occupation of Kuwait that was taken into account by the Panel in reviewing claims in the seventh instalment is set out in detail in its Reports for part one and part two of the first instalment of category "D" claims. 3/

4. The Panel has taken into consideration additional relevant material, including information accompanying the submission of these claims provided by the Executive Secretary pursuant to article 32 of the Rules. The Panel has also taken into account information and views presented by the Government of Iraq and by Governments that have submitted claims in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules.

5. Further, in accordance with article 36 of the Rules, the Panel has been assisted by expert consultants in the valuation of claims for D4(personal property) losses and D7(real property) losses.

B. General legal framework

6. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's Report for part one of the first instalment.

C. Applicable evidentiary standard

7. The issue of the evidentiary standard to be applied in reviewing category "D" claims was addressed by the Panel in chapter VI of the Report for part one of the first instalment and chapter II of the Report for part two of the first instalment. 4/ The Panel's recommendations in these two reports were approved by the Governing Council in decisions 47 and 49 respectively. 5/ As with previous instalments, the Panel has reviewed the claims in the present instalment and made its recommendations by assessing documentary and other appropriate evidence, as well as by balancing the interests of claimants who had to flee a war zone with the interests of the Government of Iraq which is liable only for direct loss, damage or injury caused as a result of Iraq's invasion and occupation of Kuwait.

II. NEW ISSUES ARISING IN THE APPLICATION CLAIMS

8. Some of the application claims in this instalment raise new issues that were not dealt with in any of the Panel's previous reports. Wherever claims give rise to new issues not considered in previous instalments, the Panel ensures that these are resolved so as to be consistent with established methodologies. These new issues and the Panel's recommendations thereon are set out below.

A. Dilmonevi issues: claims for relocation expenses

9. Two claims were submitted for relocation expenses incurred in transporting personal effects from Kuwait after it was liberated. The expenses were incurred in December 1991 and August 1994. Both claimants were on vacation at the time of Iraq's invasion and decided not to return to Kuwait after it was liberated. They later arranged to ship their belongings, which had remained in Kuwait during the period of Iraq's invasion and occupation. One claimant who had initially claimed personal property losses, wrote to the secretariat withdrawing that claim and requesting that the reduced claim for transportation of personal effects be considered in its place. The Panel notes that in both cases the claimants had acted to reduce their claimed losses, and recommends that both claimants be compensated for the relocation losses.

B. D6(loss of income) issues: authorization to claim

10. A claimant sought compensation for his wife's salary losses without any authorization from her to submit the claim. The Panel is of the view that in such cases, generally no compensation in respect of the spouse's D6(loss of income) claimed losses will be recommended. In the present case, the wife was mentioned as a family member on the "DID.2" page of the claim form. As part of the article 34 claims development process, a notification was sent to the claimant requesting additional information and documentary evidence in respect of various deficiencies in his claim, including proof of his authority. The claimant's wife responded to this notification, and provided a general statement describing the losses that she and her husband had suffered as a result of the invasion. Although no specific response was received to the Panel's request for an affirmation from the wife that the claimant was authorized to put forward this claim for salary losses on her behalf, the Panel finds that the general statement of loss submitted by the claimant's wife is sufficient confirmation of her husband's authority to make the claim on her behalf. The Panel therefore recommends that the claimant receive, on her behalf, the compensation recommended in respect of his wife's salary losses.

C. D7(real property) issues

1. Authorization to claim

11. In some cases in respect of real property held by a number of owners, the claimants submitted the claims on behalf of the other owners. In some instances, the claimant did not submit proof that he or she was authorized to claim on behalf of all the owners. The Panel considers that it is appropriate to distinguish between claims for real property losses that are made on behalf of family members (for this purpose a "family" is limited to spouses, children and parents), from claims that are made on behalf of owners who are not members of a "family" so defined.

12. In the former case, the claims must be accompanied by an authorization from each adult family member in favour of the claimant. This authorization may take the form of an informal statement, signed or thumb-printed by the family member concerned. In the latter case, a power of attorney from the other owners is required. Where such authorization or power of attorney has not been provided in the original claim submission, a request for this authority is made to the claimant by the secretariat. The Panel recommends that where the required authority is still not provided, the claimant should only receive compensation for losses corresponding to his or her percentage ownership interest in the subject property.

2. Real property in the Al Zoor Area

13. The Panel reviewed some claims related to real property situated in the Al Zoor area between Kuwait and Saudi Arabia which is under the joint jurisdiction of the Governments of both Kuwait and Saudi Arabia. Records in respect of registration of title to real property in this area are maintained by the Neutral Zone Municipality in Saudi Arabia and the Real Estate Registration Department of the Ministry of Justice in Kuwait. After reviewing the nature of the real properties and the claimed losses, the Panel finds it appropriate to apply to these claims the legal and valuation methodology established for real property situated in Kuwait. 6/ In accordance with the established methodology, verification of title to the real properties in the area was obtained from the authorities mentioned above.

3. Increased costs of construction

14. A claim was submitted for losses arising from an increase in the post-liberation cost of construction. The claimant had entered into a contract for the construction of a villa just prior to Iraq's invasion of Kuwait and was obliged to re-negotiate the contract for a higher price after the end of the occupation period. The pre-invasion and post-liberation contracts for construction showed an increase in the contract price, but were not sufficiently detailed to allow a breakdown of the specific areas in which the increase had occurred.

15. The Panel has previously determined that claims for contract interruption losses are compensable only to the extent that a demonstrable link is established between the loss and at least one of the following factors which the Panel has found to be directly linked to Iraq's invasion and occupation of Kuwait:

(a) site restoration costs;

(b) additional transportation costs; and

(c) additional insurance costs. 7/

16. As the claimant has established an increase in the construction cost, but has not clearly distinguished the precise portion of the increased costs attributable to these three factors, the Panel recommends that a discount factor be applied to the amount claimed.

4. Temporary premises

17. Some claimants had to rent temporary premises while their own properties were undergoing repair, or while construction of their own properties which had been interrupted during the occupation period was completed after Kuwait's liberation. Taking into account a previous

decision by the "F3" Panel on a similar issue, 8/ the Panel determines that the cost of such temporary premises is compensable in principle, and may be awarded for a reasonable period after Kuwait's liberation. In determining this period, the Panel examines the nature and extent of damage caused to the real property in question as well as the time likely to be necessary to effect site restoration, repairs, and/or to complete construction.

5. Claimants with no ownership or leasehold interest in real property

18. Two claims were submitted in respect of real property in which the claimant did not have the usual ownership or leasehold interest. One claimant had constructed "stables" (ten horse sheds and an annex comprising four bed-rooms, a kitchen and bathrooms) on land belonging to an equestrian society of which he was a member. The other claimant had constructed a "beach cabin" on land belonging to two friends. Claimed losses pertain to expenditure for repairs in respect of the damaged properties, and both claimants submitted documentary evidence to support such expenditure. Both claimants submitted statements from the respective owners of the real properties confirming the fact that the structures in question had been constructed by the claimants, that the claimants continued to enjoy the use of these real properties, and that the owners had no objection to the claims in question being filed before the Commission.

19. As the claimants have satisfactorily established a continued interest in the use of the real properties in question through the submission of affidavits from the owners of the real properties and through the submission of documentary evidence supporting repairs they effected, the Panel recommends that compensation in respect of the claimed losses be awarded.

6. Claimants paying instalments in respect of real property as at 1 August 1990

20. Two claims for real property losses were submitted by claimants who were residing in houses belonging to the Government of Kuwait's Public Housing Authority for several years prior to the invasion. They were making payments of fixed monthly instalments in respect of the properties in question. The Government of Kuwait continued to own the properties as at 1 August 1990, and title to the properties only passed to the claimants after 2 March 1991 upon payment of the full purchase price. A statement from the Public Housing Authority establishes that such property is given to the claimants irrevocably as from the date of commencement of residence.

21. The Panel finds that the fact of payment of instalments in respect of the properties in question and the statement from the Public Housing Authority sufficiently establish the claimants' interest in the real properties as at 1 August 1990, and therefore recommends that compensation be awarded in respect of the claimed losses.

7. Valuation issues

22. The Panel has previously established that the compensation period for claims for loss of rental income and loss of anticipated rental income is limited to 12 months, unless exceptional circumstances exist that would warrant an extension of this period. 9/ A claim was submitted for rental losses in respect of property situated on Failaka Island for a period longer than 12 months. The claimant states that numerous mines had been placed on the Island during the occupation period, and that the Government of Kuwait had decided that the Island remain uninhabited. The Panel finds that as the continuing loss of rental income is due to the Government of Kuwait's decision to keep the island uninhabited, there is no sufficient reason to extend the period of compensation beyond 12 months.

23. A claim was submitted for estimated cost of repairs in respect of a villa that the claimant stated he originally wished to lease out, but which he decided to demolish in 1992 given the depressed state of the rental market in Kuwait after the liberation. The claimant states that he intended to clear the site for development "at some time in the future". As part of the claims development process, claimants are requested to confirm whether they have undertaken the repairs in respect of which the claim is made. The valuation methodology established by the Panel applies a discount factor to claims for the estimated cost of repairs where claimants do not provide details of actual costs incurred or where the explanation provided by a claimant is considered by the Panel to be unsatisfactory. The purpose of the discount factor is to take into account the risk of overstatement of loss. 10/ The Panel considers the explanation regarding the depressed state of the rental market cannot be accepted for an unlimited period, and therefore finds no sufficient reason to waive application of the discount factor.

24. In another claim for estimated cost of repairs, the explanation provided by the claimant for not instituting repairs was that the real property in question had been the subject matter of a legal dispute concerning its boundaries. The Panel finds that the explanation does not constitute a sufficient reason to waive application of the discount factor in this case given the substantial effluxion of time.

III. PANEL DETERMINATIONS ON OTHER CLAIMS IN THE SEVENTH INSTALMENT

25. At each of its meetings in Geneva, the Panel extensively reviewed individual claims, examined the application of the methodologies developed by the Panel, and satisfied itself that the appropriate methodologies have been applied to the claims in the instalment.

A. Jurisdictional failures

26. Several claims for losses incurred outside the period 2 August 1990 to 2 March 1991 (the "jurisdictional period") were submitted. In order for

these losses to be compensable, a direct causal connection with Iraq's invasion and occupation of Kuwait must be established. The Panel considered a claim for departure, personal property and motor vehicle losses that were incurred at the border between Iraq and Jordan in October 1991. The claimant had been resident in Kuwait through the occupation period, and departed Kuwait to relocate to Jordan several months after liberation. The claimant transited through Iraq on his way to Jordan, and it was while he was crossing this border that he was robbed. No evidence was provided to establish a direct causal link between the losses claimed and Iraq's invasion and occupation of Kuwait. The Panel therefore recommends that no compensation be awarded in respect of this claim.

27. A claim was filed for personal property and motor vehicle losses by an individual who was resident in Iraq and who had remained there throughout the period of Iraq's invasion and occupation of Kuwait. The claimant departed Iraq on 3 March 1991, leaving behind all his property. He states that he is not aware of what happened to this property after his departure, and did not respond to a request from the secretariat that he must show how his claimed losses resulted directly from Iraq's invasion and occupation of Kuwait. In the absence of any evidence or explanation linking the asserted losses directly to Iraq's invasion of Kuwait, the Panel recommends that no compensation be awarded in respect of this claim.

28. In another claim for motor vehicle losses, the claimant drove his motor vehicle out of Kuwait during the occupation period to Iraq, where it was left in the grounds of an Embassy in Baghdad for use by Embassy staff. The Embassy staff used the vehicle from November 1990 to January 1991, at which time the Embassy was temporarily closed and the vehicle abandoned. The claim includes costs incurred by the Embassy staff in maintaining and using the vehicle from November 1990 to January 1991, costs associated with shipping the vehicle to Oman where the claimant was residing in September 1992, and maintenance costs incurred during the course of the shipment process and in Oman. The claimant states that he had to reimburse the Embassy staff for costs incurred during the period they used the vehicle. The Panel finds that the claimed losses are too remote from Iraq's invasion and occupation of Kuwait, and therefore recommends that no compensation be awarded.

29. A claim was submitted for personal property losses arising from a legal dispute in Kuwait that centred around the claimant's non-payment of a debt. In a post-liberation judgment a Kuwaiti court found in favour of the creditor and ordered the immediate seizure of the claimant's property pending payment of the debt. The claimant asserted that had he been present in Kuwait during the period of the occupation, he would have been in a better position to defend himself before the court and thereby avert the loss. The Panel recommends that no compensation be awarded in respect of this claim as it was not for direct losses resulting from Iraq's invasion and occupation of Kuwait.

30. A claim was submitted for losses arising from an inability to maintain mortgage payments during the period of Iraq's invasion and occupation of Kuwait in respect of a property in the United States of America. The Panel finds that the cause of the claimed loss is too remote from Iraq's invasion and occupation of Kuwait, and therefore recommends that no compensation be awarded.

B. Claims not meeting formal requirements

31. The Panel considered a number of claims where claimants submitted only claim forms not accompanied by a statement describing the claimed losses or any supporting documentary evidence. No response was received to informal and formal article 15 notifications sent by the secretariat to these claimants. The Panel recommends that no compensation be awarded in respect of these claims.

C. D4(personal property) failures

32. The personal property methodology established by the Panel in respect of invalid Kuwaiti dinar bank notes requires submission of the original bank notes for compensation to be paid in respect of the loss. 11/ The Panel considered claims for invalid Kuwaiti dinar bank notes where claimants had not complied with this methodology requirement and recommends that no compensation be awarded in respect of such claimed losses.

D. D5(securities) failures

33. The Panel considered a claim for losses arising from ownership of shares in two publicly traded companies that were alleged to have gone out of business as a result of Iraq's invasion and occupation of Kuwait. The claimant submitted copies of the share certificates, as well as affidavits from third parties which stated that the companies in question no longer operated. However, information received from The Government of Kuwait's Public Authority for Assessment of Compensation for Damages Arising From Iraqi Aggression ("PAAC") confirmed that these companies were incorporated outside Kuwait, and that they continued to operate following the liberation of Kuwait. The information received from PAAC also indicated that one company faced severe financial difficulties commencing several years prior to the invasion. The Panel recommends that no compensation be awarded in respect of these claimed losses as the claimant has not established that the companies in question failed to resume operation after Kuwait was liberated, and that such failure was caused directly by Iraq's invasion and occupation of Kuwait. 12/

34. The claimant also sought compensation in respect of a loan made to a company in Kuwait prior to the invasion. The claimant submitted copies of the original loan document, as well as affidavits from third parties which stated that the company in question no longer operated after Kuwait was liberated. Information received from PAAC confirmed that the company, while

facing financial difficulties commencing a few years prior to Iraq's invasion, continued operations after Kuwait was liberated, and that it had filed a claim before the Commission in category "E". The Panel recommends that no compensation be awarded in respect of these claimed losses as the debtor and debt in question continue to exist.

35. Compensation in respect of losses arising from debts owed to him by two businessmen in Kuwait as well as by a private business concern in Kuwait were sought by the same claimant. He submitted copies of cheques made out in his name as supporting documentary evidence of the debts. The Panel notes that these cheques had become stale prior to the invasion, and that the period established under Kuwaiti law for filing suit against the individuals in question had also elapsed prior to the date of Iraq's invasion of Kuwait. The Panel finds that there is no direct causal link between these losses and Iraq's invasion and occupation of Kuwait and therefore recommends that no compensation be awarded in respect of the losses claimed.

E. D6(loss of salary) failures

36. Some claimants submitted documentary evidence of employment dating from several years prior to Iraq's invasion of Kuwait. The Panel recommends that no compensation be paid in respect of salary losses where there is no evidence of employment at the time of Iraq's invasion of Kuwait.

F. Other

37. The Panel defers its consideration of several claims in the seventh instalment. Nine claims contain business losses and the D8/D9(business loss) methodology is yet to be finalized. In view of their particular circumstances, four claims and a portion of one claim are deferred for additional information. One claimant in the seventh instalment who had initially filed identical claims through two submitting entities withdrew one of his claims.

38. The Panel also considered a number of claims for claim preparation costs, including legal and loss adjusting fees. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claims for such costs.

IV. CROSS CATEGORY ISSUES

39. Recommended awards in respect of claims in this instalment are reported net of deductions of "A", "B" and "C" approved awards made to the same claimants. 13/

V. RECOMMENDATIONS

A. Awards by submitting entity

40. The annex hereto lists the awards recommended by the Panel for each Government and international organization that has claimants included in the seventh instalment. Each Government and international organization will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be seen from the annex, the Panel recommends a total of USD 131,692,078.66 against a total claimed amount of USD 207,925,598.92.

B. Interest and exchange rates

41. A number of claimants in the instalment filed claims in category "D" specifically for interest on the value of their category "C" or "D" claims. As noted by the Panel in its Report for part one of the first instalment, interest will be awarded in accordance with Governing Council decision 16. 14/

42. For purposes of calculating recommended amounts, the Panel converts currencies into United States dollars in accordance with the rates set out at paragraphs 61-63 of its First Report.

C. Corrections to previously reported claim awards

43. In accordance with procedures set out in article 41 of the Rules for the correction of award amounts previously reported in an instalment and approved by the Governing Council, the Panel recommends approval of the corrected amounts as described in the following paragraphs. 15/ A confidential listing containing a revised breakdown of amounts in respect of individual claimants will be provided to the submitting entities affected.

1. Part one of the first instalment correction

44. The UNCC Claim number in respect of one claim approved in the Report for part one of the first instalment was incorrectly reported due to a transposition of labels belonging to another claim. An amended report showing the correct UNCC Claim Number will be sent to the submitting entity concerned. Confirmation has been received from the submitting entity that payment was made to the correct claimant, despite the error in the reporting of the UNCC Claim Number.

2. Deduction of end of term indemnities

45. At paragraphs 26-28 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of Individual Claims For Damages Over US$100,000 (Category 'D' Claims)", 16/ the Panel reported that following the receipt of information from the Government of Kuwait

concerning the payment of end of term indemnities to persons who were employed in Kuwait, such payments should not be deducted from recommended awards for D6(loss of income) claims. In its "Special Report and Recommendations Made by the Category 'D' Panel of Commissioners Concerning Adjustments to Approved Claimed Awards", 17/ the Panel reported corrections to certain claims reversing the deduction of the end of term indemnity in each case. Pursuant to a request from the Government of Kuwait made under article 41 of the Rules, it was noted that one claim filed by the Government of Kuwait where the end of term indemnity had been deducted was left out and is now included for correction.

3. Deduction of category "B" awards

46. Following a review of certain awards for D3(death) claims at the request of the Government of Kuwait made under article 41 of the Rules, it was noted that deductions of awards made in category "B" had not been applied in the case of two claims approved in part one of the second instalment and in the third instalment of category "D" claims, respectively. In each case an amount of USD 2,500 should have been deducted.

4. Part one of the fourth instalment corrections

47. Two claims approved in part one of the fourth instalment require correction, pursuant to representations made by the claimants through their respective Governments for corrections under article 41 of the Rules. Upon further review of the explanations given by the claimants of the evidence submitted with their claims, it was clear that in one claim, the claimant should have received an award for D4(personal property) losses, while in another claim, the claimant should have received an award for D6(loss of income). In a third claim approved in the same instalment, it was noted during a check of the UNCC database that the claimant did not receive an award for D4(motor vehicle) losses due to data entry error.

5. Corrections arising out of changes to category "C" awards deducted from related category "D" awards

48. Two claims approved in part one of the second instalment, one claim approved in the third instalment and four claims approved in part one of the fourth instalment of category "D" claims require correction as a result of article 41 corrections applied to the related category "C" awards. 18/ The original category "C" awards were deducted from the awards for related losses in category "D". Article 41 corrections to the category "C" claims require that a revision be made to the awards for the related losses in category "D".

6. Changes to submitting entity awards by instalment

49. Pursuant to the changes to the recommended awards for the claims noted above in paragraphs 44-48, the consequential recommended changes to the submitting entity awards by instalment are as follows:

Instalment	Submitting entity	Previous recommended award (USD)	Corrected recommended award (USD)
2/1	Italy	37,370.20	14,948.05
2/1	Jordan	1,114,643.52	1,103,866.01
2/1	Kuwait	1,697,556.67	1,726,198.07
3	Kuwait	2,399,963.86	2,399,171.77
4/1	Belgium	700.00	8,284.00
4/1	Canada	1,697,291.90	1,698,329.90
4/1	France	769,356.83	760,736.63
4/1	Spain	6,228.00	13,340.68
4/1	Sweden	895,837.98	855,237.64

D. Submission through the Executive Secretary to the Governing Council

50. The Panel respectfully submits this report pursuant to article 38(e) of the Rules, through the Executive Secretary to the Governing Council.

Geneva, 31 August 2000

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M. C. Pryles
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ In the first instalment of category "D" claims, the Panel developed methodologies for the following loss types: D1(money); D1(mental pain and anguish ("MPA"); D3(death); D4(motor vehicles); D6(loss of income); D10(payment and relief to others); and D10(other). A full description of the methodologies is set out at paragraphs 103-380 of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category 'D' Claims)" (S/AC.26/1998/1). The Panel developed methodologies for the following loss types in part one of the second instalment: D2(personal injury) and D5(loss of bank accounts, stocks and other securities). These methodologies are described in the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category 'D' Claims)" (S/AC.26/1998/11), at paragraphs 41-115. The Panel developed the methodology for D4(personal property) losses in part two of the second instalment. This methodology is described in the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category 'D' Claims)"(S/AC.26/1998/15),at paragraphs 30-57. The Panel developed the methodology for D7(real property) losses in part two of the fourth instalment. This methodology is described in the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the Fourth Instalment of Individual Claims for Damages Above US$ 100,000 (Category 'D' Claims)" (S/AC.26/2000/11), at paragraphs 30-68.

3/ See in particular chapter II of the First Report and chapter IV of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the First Instalment of Individual Claims for Damages Above US$100,000 (Category 'D' Claims)" (S/AC.26/1998/3).

4/ See also paragraph 8 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) which provides that "[s]ince ... [category D] claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". See also articles 35(1) and (3) of the Rules.

5/ S/AC.26/Dec.47 (1998) and S/AC.26/Dec.49 (1998).

6/ S/AC.26/2000/11

7/ S/AC.26/2000/11, at paragraphs 66 and 67.

8/ S/AC.26/1999/24, at paragraph 63, and at paragraphs 74-77.

9/ S/AC.26/2000/11, at paragraph 63. To date, the Panel has found that exceptional circumstances exist only in the case of large building projects.

10/ S/AC.26/2000/11, at paragraph 60(d). The Panel has found that insufficient financial resources to undertake repairs is not sufficient reason to waive application of the discount factor.

11/ The compensability of personal property loss arising from invalid Kuwaiti currency was discussed in chapter III, paragraphs 26-29 of the report for part two of the second instalment (supra note 2).

12/ S/AC.26/1998/11, at paragraph 105, and S/AC.26/1998/15, at paragraph 21.

13/ See paragraph 21 of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Fourth Instalment of Individual Claims for Damages Above US$100,000 (Category 'D' Claims)" (S/AC.26/1999/21).

14/ Paragraph 1 of decision 16 (S/AC.26/1992/16) states that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." See also paragraphs 64-65 of the report for part one of the first instalment (supra note 2).

15/ Article 41 states that:

"1) Computational, clerical, typographical or other errors brought to the attention of the Executive Secretary within 60 days from the publication of the decisions and reports, will be reported by the Executive Secretary to the Governing Council.

2) The Governing Council will decide whether any action is necessary. If it is determined that a correction must be made, the Governing Council will direct the Executive Secretary as to the proper method of correction."

16/ S/AC.26/1999/9.

17/ S/AC.26/1999/20.

18/ Various corrections to category "C" claims were approved in the Eighth Report of the Executive Secretary Pursuant to Article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1999/25), the Ninth Report of the Executive Secretary Pursuant to Article 41 of the Provisional Rules For Claims Procedure (S/AC.26/2000/10) and the Tenth Report of the Executive Secretary Pursuant to Article 41 of the Provisional Rules For Claims Procedure (S/AC.26/2000/14).

Annex

SUMMARY RECOMMENDATIONS OF THE SEVENTH INSTALMENT OF CATEGORY "D" CLAIMS

Submitting entity	Amount claimed (USD)	Number of claims recommended	Number of claims not recommended for payment or (deferred) a/	Amount of compensation (USD)
Canada	75,950.00	1	-	36,850.00
Egypt	989,798.74	2	2	169,398.43
France	374,190.29	1	-	149,458.51
Germany	202,904.74	1	1	1,955.14
India	8,085,756.22	31	21	840,347.11
Italy	583,734.43	2	-	271,403.90
Jordan	4,885,465.81	8	2(6)	916,449.17
Kuwait	184,246,144.63	449	42(6)	127,725,246.22
Lebanon	168,525.95	1	-	130,940.18
Pakistan	530,847.75	2	-	74,124.45
Sudan	415,388.13	2	-	28,319.88
Sweden	558,222.08	1	-	216,425.65
Syrian Arab Republic	160,670.00	-	1	0.00
United Kingdom	5,295,690.50	8	3 b/	756,849.94
United States of America	958,205.84	5	1(1)	369,240.92
UNHCR Canada	394,103.81	1	1	5,069.16
Total	207,925,598.92	515	74(13)	131,692,078.66

a/ Numbers in parentheses represent claims that have been deferred for reasons set out in paragraph 37 of the report.

b/ Includes one withdrawn claim.

Annex IV

Decision concerning the seventh instalment of individual claims for damages above USD 100,000 (category "D" claims) taken by the Governing Council of the United Nations Compensation Commission at its 101st meeting, held on 7 December 2000 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the seventh instalment of individual claims for damages above USD 100,000 (category "D" claims), covering 602 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country or international organization, based on the recommendations contained in the annex to the report, are as follows:

* Previously issued as document S/AC.26/Dec.111 (2000).

1/ The text of the report appears in document S/AC.26/2000/25 (annex III above). In conformity with the provisions on confidentiality in the Rules (art. 30, para. 1, and art. 40, para. 5), information concerning the amount to be paid to each individual claimant will not be made public, but will be provided to each respective Government or international organization separately.

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Canada	1	-	75,950.00	36,850.00
Egypt	2	2	989,798.74	169,398.43
France	1	-	374,190.29	149,458.51
Germany	1	1	202,904.74	1,955.14
India	31	21	8,085,756.22	840,347.11
Italy	2	-	583,734.43	271,403.90
Jordan	8	2	4,885,465.81	916,449.17
Kuwait	449	42	184,246,144.63	127,725,246.22
Lebanon	1	-	168,525.95	130,940.18
Pakistan	2	-	530,847.75	74,124.45
Sudan	2	-	415,388.13	28,319.88
Sweden	1	-	558,222.08	216,425.65
Syrian Arab Republic	-	1	160,670.00	nil
United Kingdom	8	2	5,295,690.50	756,849.94
United States	5	1	958,205.84	369,240.92
UNHCR Canada	1	1	394,103.81	5,069.16
Total	515	73	207,925,598.92	131,692,078.66

3. Decides also, pursuant to article 41 of the Rules, to approve the amount of the corrected awards for four claims in part one of the second instalment, for two claims in the third instalment, and for seven claims in part one of the fourth instalment of "D" claims. The aggregate amounts of the corrected awards, based on the recommendations contained in paragraph 49 of the report are as follows:

Part one of the second instalment corrections

Country	Previous recommended award (USD)	Corrected recommended award (USD)
Italy	37,370.20	14,948.05
Jordan	1,114,643.52	1,103,866.01
Kuwait	1,697,556.67	1,726,198.07

Third instalment corrections

Country	Previous recommended award (USD)	Corrected recommended award (USD)
Kuwait	2,399,963.86	2,399,171.77

Part one of the fourth instalment corrections

Country	Previous recommended award (USD)	Corrected recommended award (USD)
Belgium	700.00	8,284.00
Canada	1,697,291.90	1,698,329.90
France	769,356.83	760,736.63
Spain	6,228.00	13,340.68
Sweden	895,837.98	855,237.64

4. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)),

5. Recalls that when payments are made in accordance with decision 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Governments and international organizations shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

6. Notes that no recommendations have been made for 14 claims referred to at paragraph 37 of the report,

7. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government and international organization.

Annex V

Report and recommendations made by the Panel of Commissioners concerning the second instalment of F2 claims*

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* Previously issued as document S/AC.26/2000/26.

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Introduction

1. This is the second report submitted to the Governing Council of the United Nations Compensation Commission (the "Commission") pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules") 1/ by the Panel of Commissioners (the "Panel"), composed of Messrs. Francisco Orrego Vicuña (Chairman), Hans van Houtte and Jen Shek Voon, appointed to review "F2" claims. 2/ This report sets forth the Panel's determinations and recommendations to the Governing Council with respect to the second instalment of "F2" claims, comprising 24 claims (the "Claims") filed by ministries and other Government entities of the Kingdom of Saudi Arabia ("Saudi Arabia") (collectively, the "Claimants"). 3/ The Claims were submitted to the Panel in accordance with article 32 of the Rules on 23 September 1999. The Claims seek compensation totalling approximately USD 498,958,209 4/ for alleged direct loss, damage or injury arising as a result of Iraq's invasion and occupation of Kuwait.

2. The Claimants are listed in Table 1 below, together with the total asserted amount of compensation claimed and the total amount of compensation recommended by the Panel. The claim amounts set out in Table 1 are principal amounts as the Claimants make no claim for interest. The Claimants also seek no compensation for claim preparation costs. For the sole purpose of comparison, claimed amounts that were expressed in Saudi riyals ("SAR") or Kuwaiti dinars ("KWD") have been converted to United States dollars ("USD") based on August 1990 mid-point rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics. 5/

Table 1. Summary of amounts claimed and recommended amounts in second instalment of 'F2' claims

Claimant	Original amount claimed (in original currency) 6/		Original amount claimed (in USD)	Review amount (in original currency) 7/		Review amount (in USD)	Recommended amount (in original currency) 8/	
stoms Department	SAR	50,093,796	13,376,181	SAR	50,093,796	13,376,181	SAR	2,263,288
di Railways Organization	SAR	1,700,478	454,066	SAR	1,692,432	451,918	SAR	616,604
istry of Communications	SAR	286,289,867	76,445,892	SAR	286,289,867	76,445,892	SAR	nil
l Estate Development d	SAR	347,827,260	92,877,773	SAR	333,699,532	89,105,349	SAR	63,332,820
istry of PTT (General rectorate for Post & puty Ministry for intenance and Operations)	SAR	3,175,594	847,956	SAR	2,171,143	659,851	SAR	1,045,078
istry of PTT (Central gion)	SAR	3,114,000	831,509	SAR	2,905,073	775,720	SAR	574,373
istry of PTT (Southern gion)	SAR	2,748,357	733,874	SAR	2,211,655	590,562	SAR	520,016
istry of PTT (Eastern gion)	SAR	9,583,850	2,559,105	SAR	7,814,257	2,086,584	SAR	1,235,160
istry of PTT (Western gion)	SAR	4,438,000	1,185,047	SAR	4,438,000	1,185,047	SAR	1,983,564
istry of Health	SAR	47,694,878	12,735,615	SAR	46,234,678	12,345,708	SAR	18,682,967
istry of Information	SAR	5,556,169	1,483,623	SAR	5,556,169	1,483,623	SAR	1,220,429
istry of Higher ucation	SAR	45,752,688	12,217,006	SAR	44,651,278	11,922,905	SAR	25,383,170
istry of Higher ucation - Cultural taché	KWD	5,386	18,637	KWD	-	-	KWD	nil
tional Guard	SAR	205,336,292	54,829,450	SAR	205,336,292	54,829,450	SAR	2,169,932
	USD	210,000,000	210,000,000		-	-		-
ter & Sewerage Authority l-Khafji) 9/	SAR	38,615,295	10,311,160	SAR	38,615,295	10,311,160	SAR	3,518,565
nicipality of Al-Khafji	SAR	13,867,600	3,702,964	SAR	13,867,600	3,702,964	SAR	2,131,811

Claimant	Original amount claimed (in original currency) 6/		Original amount claimed (in USD)	Review amount (in original currency) 7/		Review amount (in USD)	Recommended amount (in original currency) 8/	
Charity Society	SAR	389,287	103,948	SAR	389,287	103,948	SAR	143,476
Saudi Red Crescent Society	SAR	115,000	30,708	SAR	115,000	30,708	SAR	51,750
Department for the Education of Girls	SAR	9,650,000	2,576,769	SAR	9,650,000	2,576,769	SAR	2,162
Al Alamein Sports Club	SAR	155,285	41,465	SAR	155,285	41,465	SAR	65,139
Goodness Preaching Authority	SAR	9,005	2,405	SAR	9,005	2,405	SAR	1,352
Ministry of Education Region of Dammam	SAR	5,139,765	1,425,844	SAR	4,672,285	1,247,606	SAR	459,879
Ministry of Education - Region of Hafr Al Batin	SAR	529,118	141,287	SAR	529,118	141,287	SAR	29,650
Ministry of Education - Region of Riyadh	SAR	97,090	25,925	SAR	97,090	25,925	SAR	92,865
Summary total:	SAR KWD USD	1,082,278,694 5,386 210,000,000	288,939,572 18,637 210,000,000	SAR KWD USD	1,081,494,137	- - 281,443,027	SAR KWD USD	125,491,850 n/a n/a
Total (USD)			498,958,209			281,443,027		

I. PROCEDURAL HISTORY

3. Pursuant to article 16 of the Rules, the Executive Secretary of the Commission reported to the Governing Council the significant factual and legal issues raised by the Claims in the twenty-seventh and twenty-eighth reports, dated 26 April 1999 and 23 July 1999, respectively. Those reports were circulated to all Governments and international organizations that filed claims before the Commission and to the Government of the Republic of Iraq ("Iraq"). Pursuant to article 16(3) of the Rules, a number of Governments, including Iraq, submitted their information and views concerning the reports to the Commission. These responses have been considered by the Panel during its review, consideration and resolution of the Claims.

4. In March 1999, pursuant to article 36 of the Rules and after a competitive bidding process, the services of expert consultants in accounting and loss adjusting were retained to assist the Panel in the review and valuation of the Claims.

5. After a preliminary review of the Claims, the secretariat sent notifications to each Claimant in June 1999 seeking additional information or documentation to assist the Panel in verifying and valuing the Claims, pursuant to article 34 of the Rules ("article 34 notifications"). An addendum to an article 34 notification relating to one Claim was sent to the relevant Claimant in July 1999. The Commission received documentation and information in response to the article 34 notifications from the Claimants during the period from September to November 1999.

6. Following submission of the Claims to the Panel on 23 September 1999, procedural orders were issued informing the Claimants that their Claims were under review and had been classified as "unusually large or complex" within the meaning of article 38(d) of the Rules.

7. In accordance with the instruction of the Panel, copies of the procedural orders were sent to Iraq and to the Claimants.

8. During the course of review of the Claims, the Panel held regular meetings at the Commission's headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided legal, administrative and technical support to the Panel.

9. After consideration of the Claimants' responses to the article 34 notifications, and in accordance with its work programme for the Claims, the Panel directed a verification team, comprising members of the secretariat and the expert consultants, to visit Saudi Arabia from 3 to 11 February 2000 to clarify issues arising from the review of the Claims. Prior to the inspection, the verification team sent detailed requests for further documentation and information to each Claimant. During the

the Commission's headquarters in Geneva. The verification team also met with officials from the Ministry of Finance and National Economy ("Ministry of Finance").

10. During the on-site inspection, the verification team requested that additional documents and information be provided by the Claimants. The Claimants' responses to those requests were received by 29 February 2000.

11. The Panel held detailed discussions with the members of the verification team in respect of their findings.

12. On 22 March 2000, the Panel issued Procedural Order No. 2 requesting information from the Ministry of Finance concerning Saudi Arabia's sources of revenue and budgetary processes. The Ministry of Finance submitted its response to the procedural order on 4 May 2000. The Panel established that this was the date until which it was able to take into consideration information and documentation provided in relation to the Claims.

13. All responses to the requests for information and documentation and to Procedural Order No. 2 have been considered by the Panel.

II. BACKGROUND TO THE CLAIMS

A. The influx of refugees into Saudi Arabia after Iraq's invasion and occupation of Kuwait

14. The Claimants assert that as a result of Iraq's invasion and occupation of Kuwait, approximately 350,000 to 360,000 refugees entered Saudi Arabia from Kuwait during the period of Iraq's invasion and occupation of Kuwait. 10/ The majority of the refugees, comprising Kuwaiti and non-Kuwaiti nationals, entered the country through Saudi Arabia's Eastern Province bordering Kuwait. Of this number, a large proportion is alleged to have arrived in Saudi Arabia immediately following Iraq's invasion and occupation of Kuwait. The closing of the border between Saudi Arabia and Kuwait by the Iraqi army soon after Iraq's invasion and occupation of Kuwait prevented other Kuwaiti and non-Kuwaiti nationals from leaving Kuwait until the middle of September 1990, when the border was re-opened, thereby allowing more refugees to enter Saudi Arabia.

15. In response to the influx of refugees into the Eastern Province of Saudi Arabia, the King of Saudi Arabia issued a Royal Decree in early August 1990 instructing Saudi Arabian Government ministries and entities to provide accommodation and other assistance to the refugees. Government ministries and entities responded by providing refugees of Kuwaiti nationality ("Kuwaiti refugees") with accommodation, food, clothing and medical care, while the majority of the non-Kuwaiti refugees were provided with emergency assistance prior to being repatriated.

B. Saudi Arabia's participation in the military response to Iraq's invasion and occupation of Kuwait

16. In response to Iraq's invasion and occupation of Kuwait on 2 August 1990 and the massing of Iraqi troops on Saudi Arabia's northern border on 3 August 1990, Saudi Arabia agreed on 6 August 1990 to the deployment of foreign troops on its territory. The Claimants assert that during the period of Iraq's invasion and occupation of Kuwait, Saudi Arabia provided "host nation support" in the form of transport, accommodation, food and water to approximately 560,000 troops from those nations participating in the Coalition against Iraq's invasion and occupation of Kuwait (referred to in this report as the "Allied Coalition Forces"). 11/ Saudi Arabian infrastructure and facilities were used by Allied Coalition Forces and Saudi Arabian troops during this period. As a result, costs were incurred by Saudi Arabian Government entities in support of military preparations taking place in Saudi Arabia.

17. In addition to providing "host nation support", Saudi Arabia was a member of the Allied Coalition Forces and participated in military operations against Iraq. 12/ Approximately 100,000 Saudi Arabian troops, including members of the Army, Air Force and National Guard, were mobilized and deployed during the period of Iraq's invasion and occupation of Kuwait. 13/ As a result, costs were also incurred by Saudi Arabia in respect of preparing for and participating in the military response to Iraq's invasion and occupation of Kuwait.

III. LEGAL FRAMEWORK

A. Functions of the Commission

18. Three tasks have been entrusted to the Panel in the present proceedings. First, the Panel must determine whether the various types of losses asserted fall within the jurisdiction of the Commission. Second, it must verify whether the asserted losses that are, in principle, compensable have in fact been incurred. Third, it must value those losses found to be compensable and to have been incurred.

19. In carrying out these tasks, the Panel has given careful consideration to the additional information and views provided by the Government of Iraq and claimant Governments in response to the Executive Secretary's reports circulated pursuant to article 16 of the Rules. The Panel has also taken note of certain findings contained in the reports of other panels of Commissioners, which have been approved by the Governing Council, regarding the interpretation of relevant Security Council resolutions and Governing Council decisions and the relevance of various legal principles.

20. The Panel has applied relevant and established legal and valuation principles to the assessment, verification and valuation of the Claims as

B. Applicable law

21. Article 31 of the Rules provides that:

"In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

C. Liability of Iraq

22. Paragraph 16 of Security Council resolution 687 (1991) reaffirmed Iraq's liability under international law:

"...for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait". 14/

D. The directness requirement

23. The Governing Council has provided guidance, most notably in Governing Council decisions 7, 9 and 15, 15/ on what constitutes "direct loss, damage ... or injury" for which Iraq is liable under Security Council resolution 687 (1991).

24. Paragraph 34 of decision 7 provides that:

"These payments are available with respect to any direct loss, damage, or injury to Governments or international organizations as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or the threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention."

25. Paragraph 36 of decision 7 provides that:

"These payments will include loss of or damage to property of a Government, as well as losses and costs incurred by a Government in evacuating its nationals from Iraq or Kuwait. These payments are also available to reimburse payments made or relief provided by Governments or international organizations to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council."

26. Paragraph 3 of Governing Council decision 15 provides that:

"The two essential elements of admissible losses are (a) that such losses must be the result of Iraq's unlawful invasion and occupation of Kuwait and (b) that the causal link must be direct."

27. Paragraph 6 of decision 15 states that the enumerated circumstances set out in paragraph 34 of Governing Council decision 7 are not exhaustive and that there "will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait".

28. The Panel finds that a direct loss is one which, as a matter of objective assessment, would have been expected as a normal and natural consequence of Iraq's invasion and occupation of Kuwait. 16/

E. Location of the loss

29. The losses that comprise these Claims are asserted, with one exception, to have been sustained in Saudi Arabia. 17/ The Panel notes that Security Council resolution 687 (1991) does not expressly indicate where a direct loss should have occurred and finds that there is no jurisdictional bar, in principle, to the award of compensation for losses sustained in Saudi Arabia. 18/ The Panel finds, however, that a claim based on an incident occurring outside Iraq or Kuwait must be more fully substantiated than losses occurring in Iraq or Kuwait, as the latter are more easily attributable to Iraqi actions. 19/

F. Mitigation

30. Paragraph 6 of Governing Council decision 9, which relates to compensation for business losses, provides that "[t]he total amount of compensable losses will be reduced to the extent that those losses could reasonably have been avoided". Paragraph 9(IV) of Governing Council decision 15 confirms that the duty to mitigate applies to all claims. In its review and assessment of the Claims, the Panel has been mindful of the duty of the Claimants to take reasonable measures to avoid, diminish or

IV. CONSIDERATION OF COMMON LEGAL ISSUES

31. Many of the legal issues raised in the Claims arise in more than one Claim. In these circumstances, the Panel finds it appropriate first to consider the legal issues that are common to several Claims and then, in the light of these common considerations, to examine and report on each Claim individually.

A. Military operations

32. Paragraph 34(a) of Governing Council decision 7 provides for the payment of compensation for any loss suffered as a result of military operations or the threat of military action by either side during the period 2 August 1990 to 2 March 1991. 20/

33. Some of the Claims include claims for losses, including real and tangible property damage, that the Claimants allege arose as the result of military operations, including ground, air and Scud missile attacks by Iraq against Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait. 21/

34. Between 18 January and 26 February 1991, Iraq fired 46 Scud missiles at Saudi Arabia. 22/ While many of the missiles were intercepted by Patriot missiles, one missile landed in Al Khobar, near Dhahran, causing, inter alia, damage to property. Debris from intercepted missiles landed in the capital, Riyadh, and in other parts of northeastern Saudi Arabia, including Hafr Al Baten, causing damage to property in those areas. 23/

35. The Claims also include claims for real and tangible property losses arising as a result of Allied Coalition military operations which took place in the Eastern Province of Saudi Arabia between 15 January and 2 March 1991. 24/ In response to the commencement of these military operations, the town of Al Khafji, situated approximately 20 kilometres south of the border between Saudi Arabia and Kuwait and close to important Saudi Arabian oil fields, was immediately evacuated. From 29 to 30 January 1991, the town, which was only lightly defended, was occupied by Iraqi troops who had crossed the Saudi Arabian border from Kuwait. On 31 January 1991, a battle to liberate Al Khafji resulted in the retreat of the Iraqi forces from the town. The town suffered property damage during the course of the occupation and battle. 25/

36. The Panel finds that a claimant seeking compensation for loss or damage arising out of military operations in Saudi Arabia must demonstrate that the loss or damage for which compensation is claimed resulted from a specific military event or events in order to establish the requisite causal link between the loss or damage and Iraq's invasion and occupation of Kuwait. This is because the military operations that resulted in damage in Saudi Arabia were sporadic events that did not bring about the kind of systematic and thorough damage and injury inflicted by the military operations that took place all over Kuwait during the relevant period. 26/

37. The Panel finds that Saudi Arabian Government claims for real and tangible property damage suffered as a result of Iraq's Scud missile attacks on Saudi Arabia, the battle of Al Khafji and other military operations in Saudi Arabia are, in principle, compensable in accordance with paragraph 34(a) of Governing Council decision 7, subject to consideration of the applicability of Governing Council decision 19.

B. Military costs

38. Governing Council decision 19 provides:

> "The Governing Council confirms that the costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation." 27/

39. One claim, that of the National Guard, seeks compensation for, inter alia, costs of recruiting and training new recruits as part of the National Guard's mobilisation and deployment of troops for, inter alia, the Allied Coalition Forces' military operations against Iraq. 28/ Some of the Claims, including those of the Saudi Railways Organization, the Ministry of Communications, the Real Estate Development Fund, the Ministry of Post, Telegraph and Telephone, the Ministry of Education and the Ministry of Health, include claims for the costs of providing accommodation, food, medical services, transport, logistical support and telecommunications services to the Allied Coalition Forces. These services were provided to Saudi Arabian as well as other units of the Allied Coalition Forces in the context of Saudi Arabia's role as "host nation" during the period of Iraq's invasion and occupation of Kuwait. 29/ The Panel finds that such services constitute support provided in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait.

40. The Panel finds that the costs of the above Claimants' preparation for, participation in, or provision of support in relation to, the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait fall within the scope of Governing Council decision 19 and are therefore not eligible for compensation.

41. Other Claims, such as that of the National Guard, include claims for the costs of relief and assistance provided by military entities to civilians and refugees. The Panel finds that the fact that a claimant is a military entity, while a factor to be considered, is not determinative of the question of exclusion from compensation under Governing Council decision 19. Rather, the Panel must also examine the nature of the activity for which the costs were incurred and the purpose for which it was carried out. Having considered the nature and purpose of expenditures to assist Saudi Arabia's civilian population or refugees present in Saudi Arabia as a result of Iraq's invasion and occupation of Kuwait, the Panel finds that such expenditures do not fall within the terms of Governing

Council decision 19 as discussed above, even where those expenditures have been incurred by a military entity.

42. The circumstances of each Claim and the applicability of Governing Council decision 19 thereto are discussed in more detail in the context of the individual Claims, below.

C. Threat of military action

43. Paragraph 34(a) of decision 7, cited at paragraph 24 above, also refers to losses arising as a result of "the threat of military action". Not only was Saudi Arabia subject to actual military operations as described in paragraphs 33 to 36 above, but it was also the subject of threats of military action, including verbal threats, the threat posed by the massing of Iraqi troops on the Saudi Arabian border on 3 August 1990 and the aiming of Scud missiles at the territory of Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait. 30/ The incursion of Iraqi troops into Saudi Arabian territory in January 1991 confirmed the reality of the threat of military action posed by Iraq to Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait.

44. Confronted with such a credible and serious threat of military action by Iraq, the Government of Saudi Arabia and its entities responded by implementing preventive and protective measures throughout the country for the benefit of the civilian population. 31/

45. A number of Claimants, including the Saudi Railways Organization, the Ministry of Post, Telegraph and Telephone, the Ministry of Health, the Ministry of Information, the Ministry of Higher Education, the Municipality of Al Khafji and the Water and Sewerage Authority, claim for the costs of the measures that they undertook in response to the threat of military action to which Saudi Arabia was exposed during the period of Iraq's invasion and occupation of Kuwait. These measures included the purchase of gas masks, protective clothing, medicines, medical supplies and emergency equipment, as well as the setting up of emergency health and telecommunications plans.

46. This and other Panels have found that preventive and protective measures such as those set out above that were implemented for the benefit of the civilian population in response to the threat of military action posed by Iraq during the period of its invasion and occupation of Kuwait are, in principle, compensable. 32/ The Panel finds that the measures implemented must, however, have been a reasonable and proportionate response to the type of risk to which Saudi Arabia was exposed during the period of Iraq's invasion and occupation of Kuwait. 33/

47. The measures undertaken by the Government of Saudi Arabia in response to the threat of military action will be examined in the context of each individual Claim as discussed below. In all cases, however, the Claimant

must show that the costs incurred are direct losses resulting from Iraq's invasion and occupation of Kuwait.

D. Payment or relief to others

48. The provision of assistance to refugees by Saudi Arabian Government ministries and entities gave rise to Claims from the following Saudi Arabian ministries and organizations: Saudi Railways Organization, the Real Estate Development Fund, the Ministry of Post, Telegraph and Telephone, the Ministry of Education, the Ministry of Higher Education, and various entities in the Municipality of Al Khafji. These Claims include claims for the costs of providing accommodation, food, water, medical supplies, education, telecommunications facilities and allowances to the refugees during the period of Iraq's invasion and occupation of Kuwait. The Claims also include claims for the costs of overtime and additional salaries paid to Government employees and contracted workers by the Government ministries and entities that assisted in the refugee assistance operation. 34/

49. The Panel finds that costs incurred in making payments or providing relief to the refugees who were present in Saudi Arabia as a result of departure from (or a decision not to return to) Iraq or Kuwait during the period of Iraq's invasion and occupation of Kuwait are, in principle, compensable in accordance with paragraphs 34(b) and 36 of Governing Council decision 7.

E. Salary and labour-related benefits

50. The Claims include claims for wage and salary costs and other labour-related benefits that are asserted in four distinct circumstances:

(a) claims for staff costs (including additional salaries, overtime and incidental staff costs) incurred in providing assistance to refugees;

(b) claims for staff costs (including salaries, overtime, bonuses, meal and transport allowances) incurred in implementing emergency plans in response to the threat of military action during the period of Iraq's invasion and occupation of Kuwait;

(c) claims for increased expatriate staff travel costs alleged to result from increased war risk insurance premiums and re-routing of flights; and

(d) claims for staff costs (including salaries and overtime) incurred in providing support in relation to the activities of the Allied Coalition Forces (including Saudi Arabian military forces) and their military response to Iraq's invasion and occupation of Kuwait.

The Panel will consider each of the four categories listed above in turn.

1. Refugee-related staff costs

51. A number of the Claimants, including the Real Estate Development Fund, the Ministry of Post, Telegraph and Telephone, the Ministry of Higher

Education, the Water and Sewerage Authority and the Municipality of Al Khafji, seek compensation for staff costs incurred in providing assistance to refugees. These costs include salaries and overtime paid to staff who assisted in equipping and furnishing refugee accommodation and salaries paid to staff specifically recruited to provide such assistance, overtime paid to university staff who assisted Kuwaiti refugees accommodated on university campuses, overtime paid to water tanker drivers hired to transport water to refugee camps, salary costs of security guards hired to protect refugee accommodation, and costs of meals for staff who assisted refugees.

52. Pursuant to its finding at paragraph 49 above, the Panel finds that incremental salary and overtime costs incurred in assisting refugees during the period of Iraq's invasion and occupation of Kuwait are, in principle, compensable. 35/

53. Incremental salary and overtime payments include payments made over and above normal salary and overtime payments made to regular staff as a direct result of Iraq's invasion and occupation of Kuwait, as well as salary and overtime payments to staff specifically recruited as a result of Iraq's invasion and occupation of Kuwait. 36/ In all cases, the salary and overtime payments must also be reasonable in order to be compensable.

54. The Panel finds that salary and overtime payments made to staff members who performed their regular tasks in assisting refugees are not, in principle, compensable where those payments would have been made regardless of Iraq's invasion and occupation of Kuwait. 37/

2. Additional salary costs incurred in implementing preventive and protective measures

55. A number of Claimants, including the Ministry of Communications, the Ministry of Post, Telegraph and Telephone, the Ministry of Health, the Ministry of Information, the Water and Sewerage Authority and the Municipality of Al Khafji, seek compensation for increased staff costs, including increased salary and overtime costs, bonus payments, and the costs of providing benefits such as meals, accommodation and travel allowances, to staff who were required to implement emergency plans and other preventive and protective measures in response to Iraq's invasion and occupation of Kuwait.

56. Pursuant to its finding at paragraph 46 above, the Panel finds that increased staff costs incurred in implementing reasonable and proportionate protective measures are, in principle, compensable. Such costs include incremental salary and overtime costs, and other incremental costs of providing benefits such as meals, accommodation and travel allowances, incurred in implementing emergency plans and other preventive and protective measures during the period of Iraq's invasion and occupation of Kuwait. 38/ In all cases, the costs must also be reasonable in order to be compensable.

57. The Panel finds that payments made to staff members who performed their regular tasks in implementing emergency plans and other preventive and protective measures are not in principle compensable where those payments would have been made regardless of Iraq's invasion and occupation of Kuwait.

58. The Claims also include claims for bonus payments made to staff during and after the period of Iraq's invasion and occupation of Kuwait. The Panel finds that in determining the compensability of claims for bonuses, the Claimant must demonstrate that the bonuses were paid as a direct result of Iraq's invasion and occupation of Kuwait and that the amounts of the bonuses were reasonable. 39/

3. Expatriate staff travel costs

59. The Claims include claims for increased expatriate staff travel costs alleged to result from the payment of war risk insurance premiums and additional travel costs incurred as a result of re-routing.

60. Pursuant to their contracts of employment, expatriate staff employed by the Government of Saudi Arabia or one of its entities were entitled annually to a maximum of four return air tickets with Saudi Arabian Airlines to enable the staff member and his or her family to return to their home countries for leave. A number of Claimants, including the Ministry of Post, Telegraph and Telephone and the Ministry of Higher Education, allege that in response to the threat of military action to which Saudi Arabia was exposed, expatriate staff took their home leave entitlements during the period of Iraq's invasion and occupation of Kuwait and that, as a result, the Claimants incurred incremental costs because of the imposition of war risk insurance at fixed rates on one-way and return air fares during the period of Iraq's invasion and occupation of Kuwait.

61. The Panel finds that in view of the threat of military action to which Saudi Arabia was exposed during the relevant period, incremental expatriate staff travel costs incurred as a result of the imposition of war risk insurance are, in principle, compensable in accordance with paragraph 34(a) of Governing Council decision 7, to the extent such increased costs were reasonable. 40/

62. With respect to increased costs alleged to have arisen as a result of re-routing, many Claimants state that direct flights to the workers' home countries were no longer available. Many flights were re-routed, often via Cairo, during the period of Iraq's invasion and occupation of Kuwait. The Claimants assert that as a result, some of their employees incurred incidental transit costs for meals and accommodation which they would not have incurred under normal circumstances, and which costs were passed on to the Claimants.

63. The Panel finds that in view of the threat of military action to which Saudi Arabia was exposed, incidental staff transit costs that were

incremental and were incurred as a result of re-routing of flights to and from Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait are, in principle, compensable, to the extent such costs were reasonable. 41/

4. Increased staff costs incurred with respect to the Allied Coalition Forces

64. The Panel finds that in accordance with Governing Council decision 19, as discussed in paragraph 40 above, incremental salary costs incurred in preparing for, participating in or providing support in relation to the activities of the Allied Coalition Forces (including the Saudi Arabian military forces) and their military response to Iraq's invasion and occupation of Kuwait constitute military costs and are therefore not eligible for compensation.

V. VERIFICATION AND VALUATION

A. The importance of evidence

65. Under article 35(1) of the Rules, "[e]ach claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991)", and it is for the Panel to decide "the admissibility, relevance, materiality and weight of any documents and other evidence submitted".

66. With respect to category "F" claims, article 35(3) of the Rules requires that "such claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss".

67. The Governing Council had previously emphasized the mandatory nature of this requirement for Governments in paragraph 37 of decision 7, which states that "[s]ince these [category "F"] claims will be for substantial amounts, they must be supported by documentary and other appropriate evidence".

68. The evidentiary requirement of article 35(3) of the Rules was included in the category "F" claim form. 42/ In addition, the category "F" claim form advised each claimant to include in its statement of claim the following:

(a) The date, type and basis of the Commission's jurisdiction for each element of loss;

(b) The facts supporting the claim;

(c) The legal basis for each element of the claim;

(d) The amount of compensation sought, and an explanation of how this amount was arrived at.

69. In decision 46, the Governing Council affirmed that:

> "... claims received in categories 'D', 'E' and 'F' must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss in accordance with the Provisional Rules for Claims Procedure and the criteria established by the Governing Council..."

and that

> "...no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the claimant ..." 43/

70. The Panel notes that several of the Claimants filed their claims without documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss. These Claimants were asked, in article 34 notifications, in supplementary written requests for further documentation and information sent prior to the on-site inspection, and at interviews with members of the Commission's verification team in Saudi Arabia during the on-site inspection, to provide evidence to enable the Panel to verify and value the asserted losses. In those cases where insufficient evidence was provided in support of the Claims to permit their verification or valuation, despite the requests detailed above, the Panel does not recommend any award of compensation.

B. The procedures adopted by the Panel to verify and value the Claims

71. With the requirements of article 35 of the Rules in mind, the Panel developed, with the assistance of its expert consultants, evidentiary guidelines that it used to verify and value each Claim that was found to be compensable in principle. Such guidelines took into account the difficulties in providing evidence relating to a period of military disturbance. While the Panel reviewed and considered all of the evidence submitted in respect of each Claim, the Panel first looked for primary documentation, such as contracts, audited accounts, payment orders or invoices. In the absence of such documentation, or where primary documentation alone was insufficient to permit verification and valuation, the Panel looked for secondary documentation, such as unaudited accounts, payroll records, contemporaneous estimates, photographs, video footage or independent witness statements.

72. At the outset of its review of each Claim, the Panel examined each distinct loss element in the Claim to determine whether each loss element was, in principle, compensable.

73. With respect to those loss elements of the Claims that the Panel determined were, in principle, compensable, the Panel proceeded, with the assistance of the expert consultants, to verify and value the loss elements.

74. Where the evidence was insufficient to establish that a loss was sustained, the Panel recommends no award of compensation. Where the evidence was sufficient to establish that a loss was sustained, the Panel makes its recommendation as to compensation on the basis of its evaluation of the evidence provided by the Claimant.

75. With regard to compensable real and tangible property losses, the Panel satisfied itself as to the existence of the property and the Claimant's title thereto at the time of the loss, the fact of loss and whether the loss was caused by Iraq's invasion and occupation of Kuwait. The Panel then determined whether the claim was for incurred or estimated costs to repair or replace the asset, or for net book value.

76. For claims based on incurred repair or replacement costs, proof of payment was ascertained and the Claims adjusted for any unsubstantiated payments. For estimated repair or replacement costs, quotations, tenders or other appropriate documentation were examined. The Panel then verified whether the Claims reflected appropriate depreciation, normal maintenance costs or betterment. When the Claimant did not use a method of valuation that accounts for betterment, normal maintenance costs or depreciation, or when the Claimant did not tender when it would have been reasonable for it to do so, the Panel made appropriate adjustments.

77. For claims based on net book value, the Panel reviewed the evidence provided to establish the cost and date of acquisition of the asset, considered whether depreciation had been applied by the Claimant, and adjusted the claim amount to account for depreciation where necessary.

VI. OTHER ISSUES

A. Dates of loss

78. The Panel notes that it must determine the appropriate dates of loss. To this effect, the Panel notes that the majority of losses occurred during the period of Iraq's invasion and occupation of Kuwait. The Panel determines that, with the exception of claims for real and tangible property losses occurring as a result of military operations in Al Khafji, the Eastern Province and as a result of Scud missile attacks, the mid-point of the period of Iraq's invasion and occupation of Kuwait, being the mid-point of the period during which the losses occurred (that is, 16 November 1990, the mid-point of the period 2 August 1990 to 2 March 1991), is the most appropriate date of loss.

79. With respect to claims for real and tangible property damage occurring as a result of military operations in Al Khafji, the Eastern Province and as a result of Scud missile attacks, the Panel determines that the date of loss is 7 February 1991. 44/

B. Currency exchange rate

80. The Claimants have incurred losses or stated their claims in currencies other than United States dollars. As the Commission pays awards in United States dollars ("USD"), the Panel is required to determine the appropriate rate of exchange. Panels have consistently determined that the currency exchange rate as at the date of loss, as determined above, is the most appropriate method of calculating the applicable exchange rate. 45/

81. The claimed losses for which compensation is recommended have been incurred in Saudi Arabian riyals ("SAR"). The Panel determines that, with the exception of claims for real and tangible property losses occurring as a result of military operations in Al Khafji, the Eastern Province and as a result of Scud missile attacks, the average exchange rate during the period of Iraq's invasion and occupation of Kuwait, namely, SAR 3.745:USD 1, is the most appropriate exchange rate to be applied to convert amounts awarded in Saudi Arabian riyals to United States dollars.

82. With respect to claims for real and tangible property damage occurring as a result of military operations in Al Khafji, the Eastern Province and as a result of Scud missile attacks, the Panel determines that the rate as of 7 February 1991, namely SAR 3.745:USD 1 is the most appropriate rate to convert amounts awarded in Saudi Arabian riyals to United States dollars.

83. In calculating the rates of exchange, the Panel has used the exchange rates as reported in the United Nations Monthly Bulletin of Statistics. 46/

C. Interest

84. Paragraph 1 of decision 16 of the Governing Council states that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". 47/ Paragraph 2 states that "[t]he methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time", while paragraph 3 provides that "[i]nterest will be paid after the principal amount of awards". Thus, as the Panel need only set the date from which interest will run, the Panel determines that interest will run from the dates set out at paragraphs 78 and 79 above, in respect of the losses described therein.

D. Categorization

85. The category "F" claim form used by Governments to submit their claims classifies losses as follows: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs (of citizens or other nationals); public service expenditures; environmental damage; depletion of natural resources; and

other. 48/ Classification of the claims was initially made by the Claimants on the claim forms. In many instances, the asserted losses were revised in the statements of claim. Based on its review of the Claimants' assertions and the supporting evidence, the Panel has reclassified all or some of the losses claimed in the statements of claim in accordance with the loss types set out in the category "F" claim form.

86. The Panel turns now to its review and assessment of the Claims in the light of the framework set out above.

VII. THE CLAIMS

A. Customs Department (UNCC Claim No. 5000196)

87. The Claimant is a Saudi Arabian Government entity whose activities include collecting customs duties and enforcing the prohibition on the importation of contraband into Saudi Arabia. The Claimant's resources are allocated from the general budget of the Government of Saudi Arabia through the Ministry of Finance.

1. Business transaction or course of dealing (SAR 36,990,197)

(a) Facts and contentions

88. The Claimant seeks compensation for a decline in revenue that it alleges occurred at three border customs posts, Al Khafji, Al Raqa'i and Judaida Ar'ar, during the period of Iraq's invasion and occupation of Kuwait. The Al Khafji and Al Raqa'i customs posts are situated on Saudi Arabia's border with Kuwait, while Judaida Ar'ar is situated on Saudi Arabia's border with Iraq. The Claimant asserts that the three border posts ceased to function on 2 August 1990 "due to the situation that prevailed at the time and, in addition, due to the real property damage suffered by all three posts". During the on-site inspection, the Claimant stated that all three posts were evacuated on 15 January 1991, immediately prior to the commencement of military operations. The Claimant alleges that the posts remained closed until 2 March 1991.

89. The claimed amount is calculated on the basis of "the average monthly revenue in the three years preceding the emergency" in respect of each post, multiplied by seven, representing the seven month period of Iraq's occupation of Kuwait.

(b) Analysis and valuation

90. The Panel finds that the evidence indicates that all three customs posts were evacuated between 15 January and 2 March 1991, in response to the threat to the safety of the Claimant's personnel posed by the military operations that took place during this period. However, the Panel finds that the asserted period of seven months during which the posts allegedly ceased to function is not supported by the evidence.

91. Moreover, the evidence indicates that the revenue that the Claimant asserts was lost from the three border customs posts was compensated for by an increase in revenue earned at other customs posts in Saudi Arabia during the relevant period.

92. The Panel therefore finds that the Claimant has failed to demonstrate that it suffered a direct loss as a result of Iraq's invasion and occupation of Kuwait and recommends no award of compensation.

(c) Recommendation

93. Based on its findings, the Panel recommends no award of compensation for business transaction or course of dealing.

2. Real property (SAR 12,084,547)

(a) Facts and contentions

94. The Claimant seeks compensation for real property damage alleged to have occurred at customs posts in Al Khafji and Al Raqa'i as a result of military operations by Iraqi and Allied Coalition Forces, and at the customs post in Judaida Ar'ar as a result of evacuating the post in response to the threat of military action during the period of Iraq's invasion and occupation of Kuwait.

95. With respect to the Al Khafji post, the Claimant asserts that during the attack by Iraqi forces on Al Khafji at the end of January 1991 and the ensuing battle between Allied Coalition Forces and the Iraqi forces to liberate the town, the customs offices, warehouses and sheds were seriously damaged and some buildings partially collapsed. The Claimant states that after liberation, it undertook urgent repairs to the customs post. The Claimant seeks compensation in the amount of SAR 809,500 for the costs of urgent repair as well as SAR 5,000,000 for "the estimated costs of long term structural repair and reconstruction" of the customs premises.

96. With respect to the Al Raqa'i post, the Claimant asserts that it was the target of an air attack on 17 January 1991 and that the air raid and the military operations of the Allied Coalition Forces resulted in serious damage and partial destruction of the customs buildings. The Claimant seeks compensation in the amount of SAR 1,799,447 for the costs of urgent repairs as well as SAR 4,400,000 for the estimated costs of long-term structural repair. This latter amount includes a claim for SAR 1,331,952 for repair of the civil protection building at the Al Raqa'i post.

97. The Claimant asserts that minor real property damage, requiring repairs in the amount of SAR 75,600, occurred at the Judaida Ar'ar customs post when the post was evacuated during the period of military operations from 15 January to 2 March 1991.

(b) Analysis and valuation

98. For the reasons stated at paragraph 37, the Panel finds that the claim for real property damage at the Al Khafji and Al Raqa'i customs posts is, in principle, compensable.

99. With respect to the claim for real property damage at the Judaida Ar'ar customs post, the Panel finds that evacuation of the post was a reasonable and proportionate response to actual military operations or the threat of military action to which the post was exposed and that damage that occurred during the period when the customs post was evacuated is, in

principle, compensable in accordance with paragraph 34(a) of Governing Council decision 7.

100. The Panel therefore finds that costs of urgent repairs at all three customs posts are, in principle, compensable. In the light of the evidence and adjustments made for betterment and depreciation in accordance with paragraph 76 above, the Panel recommends an award of SAR 809,500 for urgent repairs at Al Khafji, SAR 1,143,884 at Al Raqa'i and SAR 75,600 at Judaida Ar'ar customs posts.

101. The evidence provided in support of the claim for long term structural repairs of the Al Khafji and Al Raqa'i customs posts indicates that work was carried out at both posts from 1993 to 1995. The Panel notes that with the exception of repairs to the civil protection building at Al Raqa'i, referred to below, no evidence indicating the scope of the works undertaken at either of the posts was provided by the Claimant, despite requests in the article 34 notification and during the on-site inspection. In addition, the evidence provided does not demonstrate that the costs claimed constitute a direct loss resulting from Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation for long-term repair costs.

102. The Panel finds that the evidence provided in support of the claim for repair and reconstruction of the civil protection building at Al Raqa'i, which was located outside the main boundaries of the Al Raqa'i customs complex, does not support the conclusion that damage arising as a result of military operations during the relevant period necessitated the reconstruction of the building. However, the evidence does indicate that some damage to the building occurred as a result of military operations, which damage was capable of being repaired. Therefore, the Panel finds that only the cost of repairing the civil protection building is, in principle, compensable. In the light of the evidence and adjustments for betterment and depreciation made in accordance with paragraph 76 above, the Panel recommends compensation in the amount of SAR 154,391 for repair of the civil protection building.

(c) Recommendation

103. Based on its findings, the Panel recommends an award of SAR 2,183,375 for real property.

3. Other tangible property (SAR 1,019,052)

(a) Facts and contentions

104. The Claimant seeks compensation for loss of or damage to other tangible property alleged to have occurred at the customs posts in Al Khafji and Al Raqa'i as a result of military operations by Iraqi and Allied Coalition Forces, and at the customs post in Judaida Ar'ar as a result of evacuating the post in response to the threat of military action during the

period of Iraq's invasion and occupation of Kuwait. The Claimant seeks compensation in the amounts of SAR 152,500, SAR 859,139, and SAR 7,413 for the Al Khafji, Al Raqa'i and Judaida Ar'ar customs posts, respectively.

105. The Claimant also seeks compensation in respect of property (cash and gold) that was allegedly looted from a safe at the customs post at Al Raqa'i. The property was deposited by "passengers in transit" who were crossing the border from Kuwait into Saudi Arabia. The Claimant issued provisional receipts dated 26 August 1990 for the property. Despite the Claimant's request to the owners of the gold and cash to send a representative to collect the property, a representative had not arrived at the post prior to the commencement of military operations on 15 January 1991. The Claimant alleges that upon the return of its staff to the post after the cessation of military operations, it was discovered that the safe had been broken into and the property looted. No claim has been submitted by the owners for the return of the looted property, nor has the Claimant paid any money to them in respect of the property.

(b) Analysis and valuation

106. For the reasons stated at paragraph 37 above, the Panel finds that the claim for other tangible property damage suffered as a result of military operations at the Al Khafji and Al Raqa'i posts is, in principle, compensable.

107. The Panel further finds that loss or damage to tangible property that occurred when the three customs posts were left unguarded is, in principle, compensable in accordance with Governing Council decision 9, paragraph 13. 49/

108. With respect to the claim for property looted from the Al Raqa'i post, the Claimant was not the owner of the goods. The Panel is unable to determine from the evidence that the Claimant is obligated to reimburse the owners for the property. The Panel therefore finds that the Claimant has not sustained any loss and recommends no award of compensation.

109. In the light of the evidence and adjustments for depreciation made in accordance with paragraph 76 above, the Panel recommends an award of SAR 48,100 for tangible property loss at Al Khafji, SAR 31,257 at Al Raqa'i and SAR 556 at Judaida Ar'ar customs posts.

(c) Recommendation

110. Based on its findings, the Panel recommends an award of SAR 79,913 for other tangible property.

4. Recommendation for Customs Department

111. Based on its findings regarding the Claim by the Customs Department, the Panel recommends compensation in the total amount of SAR 2,263,288.

Table 2. Recommended compensation for Customs Department

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Business transaction or course of dealing	36,990,197	36,990,197	nil
Real property	12,084,547	12,084,547	2,183,375
Other tangible property	1,019,052	1,019,052	79,913
Total	50,093,796	50,093,796	2,263,288

B. Saudi Railways Organization (UNCC Claim No. 5000198)

112. The Saudi Railways Organization is a Saudi Arabian Government entity affiliated with the Ministry of Communications. The Claimant operates a rail service from Dammam, on Saudi Arabia's east coast, to Riyadh.

1. Contract (SAR 19,916)

(a) Facts and contentions

113. The Claimant seeks compensation for the cost of increased war risk insurance premiums it alleges it paid in respect of marine and air cargo, comprising spare parts for locomotives and carriages, that it imported into Saudi Arabia through Dhahran airport and King Abdul Aziz Port in Dammam. The increased insurance premiums relate to the period from 7 August 1990 to 3 March 1991.

114. The Claimant initially sought compensation in the amount of SAR 19,916; however, it subsequently reduced the amount claimed to SAR 11,870.

(b) Analysis and valuation

115. The Panel finds that war risk insurance costs incurred by the Claimant in importing spare parts into Dammam and Dhahran during the period of Iraq's invasion and occupation of Kuwait are, in principle, compensable. 50/ However, the Panel finds that the evidence is insufficient to verify and value the full amount claimed.

(c) Recommendation

116. In the light of the evidence, the Panel recommends an award of SAR 7,122 for contract.

2. Business transaction or course of dealing (SAR 1,352,317)

(a) Facts and Contentions

117. The Claimant asserts that during the period of Iraq's invasion and occupation of Kuwait, the volume of maritime freight arriving at King Abdul Aziz Port in Dammam declined because "cargo could not reach the port safely". The Claimant seeks compensation for a resultant decline in revenue earned from the transport of maritime freight by rail from Dammam Port to Riyadh during the period 1 September 1990 to 2 March 1991.

118. The Claimant originally calculated its loss by comparing revenue earned during the same periods in 1989-1990 and 1990-1991. However, the Claimant subsequently submitted a recalculation indicating that the decline in revenue earned on the transport of maritime freight from Dammam to Riyadh dry port was approximately 23 per cent, rather than 8% as asserted in the statement of claim. This recalculation resulted in an increased claim amount of approximately SAR 3,492,882 for loss of revenue.

(b) Analysis and Valuation

119. The Panel finds that the Claimant is not permitted to increase the amount claimed by way of information provided during the on-site inspection. 51/ Accordingly, the Panel's review was based on the original claim amount of SAR 1,352,317.

120. The Panel finds that the loss incurred by the Claimant as a result of military operations affecting Dammam port is, in principle, compensable in accordance with paragraph 34(a) of decision 7. 52/ Accordingly, the Claimant's decline in revenue is a direct loss resulting from Iraq's invasion and occupation of Kuwait and is therefore, in principle, compensable.

121. The Panel finds, however, that the Claimant has not taken into account any cost savings achieved as a result of the decreased volume of freight transported during the relevant period and has therefore made an adjustment in order to do so.

(c) Recommendation

122. In the light of the evidence, the Panel recommends an award of SAR 405,695 for business transaction or course of dealing.

3. Payment or relief to others (SAR 98,958)

(a) Facts and contentions

123. The Claimant seeks compensation for the costs of transporting 2,898 Kuwaiti refugees free of charge on regular train services from Dammam, Hofuf and Bekik to Riyadh during the period August to October 1990. The amount claimed is based on the standard second-class passenger fares normally charged by the Claimant, which fares are heavily subsidised by the Government of Saudi Arabia.

124. The Claimant asserts that its trains were operating at or near 100 per cent capacity during the period of Iraq's invasion and occupation of Kuwait, and that in order to transport 2,898 refugees, an equivalent number of fare-paying passengers could not be carried.

(b) Analysis and valuation

125. The Panel notes that no evidence was provided in support of the assertions referred to at paragraph 124 above. The Panel finds that there is insufficient evidence to demonstrate that a loss was sustained by the Claimant and therefore recommends no award of compensation.

(c) Recommendation

126. Based on its findings, the Panel recommends no award of compensation for payment or relief to others.

4. Public service expenditures (SAR 229,287)

(a) Facts and contentions

(i) Gas masks and safety equipment

127. The Claimant asserts that due to the massing of Iraqi troops on Saudi Arabia's northern frontier, 53/ the Claimant undertook certain measures to protect its employees, passengers and freight. The Claimant authorized the purchase of 2,200 gas masks in January 1991 for its employees in Dammam, their families and 242 sub-contractors, at a total cost of SAR 220,000. The Claimant did not claim for the costs of the gas masks purchased for the sub-contractors. Accordingly, the Claimant seeks compensation in the amount of SAR 195,800 for the costs of purchasing gas masks.

128. In addition, the Claimant asserts that it purchased safety equipment for bomb shelters intended to protect its employees and passengers in the port of Dammam. The Claimant seeks compensation in the amount of SAR 7,987 for the costs of such equipment.

(ii) Support for Allied Coalition Forces

129. The Claimant seeks compensation in the amount of SAR 25,500 for the costs of assigning several of its employees to accompany members of the Allied Coalition Forces by rail from Riyadh to Dammam, in particular during the period of military operations against Iraq's forces in and around the city of Al Khafji.

(b) Analysis and valuation

(i) Gas masks and safety equipment

130. In accordance with the findings at paragraph 46 above, the Panel finds the purchase of the gas masks and safety equipment for the bomb shelters 54/ to be a reasonable and proportionate response to the risk of military operations to which individuals in Dammam were exposed during the relevant period. The Panel therefore finds that the expenses incurred by the Claimant in purchasing the gas masks and safety equipment are, in principle, compensable. 55/

(ii) Support for Allied Coalition Forces

131. The Panel finds that the costs of staff accompanying members of the Allied Coalition Forces were incurred in providing support in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 64 above, the Panel finds that these costs constitute military costs under Governing Council decision 19 and therefore recommends no award of compensation.

(c) Recommendation

132. In the light of the evidence, the Panel recommends an award of SAR 203,787 for public service expenditures.

5. Recommendation for Saudi Railways Organization

133. Based on its findings regarding the Claim by the Saudi Railways Organization, the Panel recommends compensation in the total amount of SAR 616,604.

Table 3. Recommended compensation for Saudi Railways Organization

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Contract	19,916	11,870	7,122
Business transaction or course of dealing	1,352,317	1,352,317	405,695
Payment or relief to others	98,958	98,958	nil
Public service expenditures	229,287	229,287	203,787
Total	1,700,478	1,692,432	616,604

C. Ministry of Communications (UNCC Claim No. 5000199)

134. The Claimant is responsible for planning, designing, constructing and maintaining Saudi Arabia's road network.

1. Real Property (SAR 98,565,828)

(a) Costs of undertaking road study (SAR 14,565,828)

(i) Facts and Contentions

135. The Claimant asserts that, in response to damage to roads and bridges allegedly sustained as a result of the transport of heavy equipment and vehicles in Saudi Arabia's eastern and northern regions, it commissioned a study by the Road Directorate of the Danish Ministry of Transport in June 1991 to examine the condition of the entire road and bridge network throughout Saudi Arabia and the need for its repair. The Claimant seeks compensation in the amount of SAR 14,565,828, representing the fee paid to the Danish Road Directorate for its investigation and report, which was undertaken between August 1991 and March 1993.

136. The Claimant stated that prior to Iraq's invasion and occupation of Kuwait, Saudi Arabia's roads and bridges were in "good condition". On 9 January 1991, a Royal Decree was issued lifting the allowable weight limits on Saudi Arabia's roads. The Minister of Defence, Aviation and Inspector General instructed the Claimant by telegram dated 10 January 1991 to give effect to the Royal Decree. The Royal Decree was issued "because of the state of war". The Claimant stated that suspension of the weight limits affected the condition of the roads.

137. A letter dated 24 March 1991 from the President of the Council of Ministers authorizing the Claimant to commission the study by the Danish Road Directorate refers to:

> "the fact that authorisation was given for the road network to be used by all military transport vehicles disregarding weight limits..."

(ii) Analysis and valuation

138. The Panel notes that the Danish Road Directorate's report does not indicate that it was commissioned in response to damage incurred during the period of Iraq's invasion and occupation of Kuwait and does not attribute the condition of the roads to damage sustained during the relevant period. Nor does the report refer to damage caused to roads by vehicles exceeding allowable weight limits. Rather, the report identifies a budget programme for Saudi Arabia's roads by identifying the percentage of roads and bridges that would require preventative maintenance in the future.

139. No evidence is provided in support of the Claimant's allegations that the roads were damaged as a result of Iraq's invasion and occupation of Kuwait.

140. The Panel finds that the evidence does not demonstrate that the road study was carried out in response to damage caused as a result of Iraq's invasion and occupation of Kuwait. The Panel therefore finds that the cost of the study is not a direct loss resulting from Iraq's invasion and occupation of Kuwait and recommends no award of compensation.

(b) Repairs to roads and bridges (SAR 84,000,000)

(i) Facts and contentions

141. The Claimant seeks compensation in the amount of SAR 84,000,000, representing approximately 20 per cent of the total cost of SAR 420,180,415 budgeted and recommended by the Danish Road Directorate in its report for long term road and bridge repair and maintenance costs. The Claimant asserts that the remainder of the estimated costs represented betterment or part of its normal expenditure for road maintenance.

(ii) Analysis and valuation

142. The Panel finds that the repairs form part of the long term general repair and maintenance programme for Saudi Arabia's infrastructure, as recommended by the Danish Road Directorate, and the costs thereof are not a direct loss resulting from Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation.

(c) Recommendation

143. Based on its findings, the Panel recommends no award of compensation for real property.

2. Public Service Expenditures (SAR 187,724,039)

(a) Construction of emergency base for staff (SAR 598,528)

(i) Facts and contentions

144. The Claimant asserts that due to Iraq's invasion and occupation of Kuwait it was necessary to modify the basement in its official premises in Riyadh to accommodate staff members during times of emergency. The Claimant seeks compensation in the amount of SAR 598,528 for the cost of modifying the basement.

145. The Claimant stated that the basement was not in use before Iraq's invasion and occupation of Kuwait, but was later modified as a bomb shelter and used by staff whenever they heard air-raid sirens. During the on-site inspection, the Claimant stated that the existing basement could only be accessed from outside the building prior to Iraq's invasion and occupation

of Kuwait and that as a result of the invasion, the Claimant decided to build an annex to its building to provide internal access to the basement.

146. The evidence provided included a letter dated 28 May 1991 authorizing the construction of the annex and a contract dated 8 June 1991 between the Claimant and a contractor for its construction. The amount claimed, representing the construction costs, was paid on 20 April 1992.

(ii) Analysis and valuation

147. The Panel notes that despite requests in the article 34 notification and during the on-site inspection, no evidence in support of the claim for the costs of modifying the basement for use as a bomb shelter was provided by the Claimant.

148. Although costs of constructing an air raid shelter are, in principle, compensable, 56/ the Panel finds that the evidence provided is insufficient to verify and value the claim for costs of modifying the basement for staff and therefore recommends no award of compensation.

(b) Construction of detours (SAR 6,333,339)

(i) Facts and contentions

149. The Claimant seeks compensation for the costs incurred in constructing a number of detours at bridges and tunnels in the central, eastern and northern regions during the period 2 August 1990 to 2 March 1991.

150. The Claimant stated in its statement of claim that the bridges "had not been intended for the weight of traffic they were suddenly expected to bear". However, in its response to the article 34 notification, the Claimant stated that "to ensure the smooth flow of traffic movement during the war, the circumstances made it imperative that detours adjacent to bridges and narrow passageways be constructed for emergency use in case such facilities were successfully targeted by enemy action whether by missile or bomb attack." The Claimant also stated that "supplies to some areas might have been discontinued due to interruption of traffic".

151. During the on-site inspection, the Claimant asserted that the decision to construct detours was taken by the Claimant to maintain communications throughout Saudi Arabia, and was not related to the Royal Decree, referred to above, lifting weight restrictions on roads. The Claimant further stated that only the cost of surfacing the detours had been claimed and not the cost of earthworks carried out in constructing the detours.

(ii) Analysis and valuation

152. In support of its Claim, the Claimant provided a list of authorisations and invoices dated between 10 May 1990 and 8 April 1993 totalling the amount claimed for the cost of surfacing the detours.

153. The Panel finds that the evidence does not demonstrate that the detours were constructed for any purpose other than to cope with increased military traffic in the central, eastern and northern regions of Saudi Arabia. The Panel also notes that part of the amount claimed relates to costs incurred prior to and after the period of Iraq's invasion and occupation of Kuwait and that these costs are therefore not compensable. Furthermore, the Panel finds that the costs of constructing detours that were incurred during the relevant period constitute support provided in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 40 above, the Panel recommends no award of compensation for this claim.

(c) Construction of alternative roads (SAR 177,000,000)

(i) Facts and contentions

154. The Claimant seeks compensation for the costs of constructing "alternative roads" in the northeastern region of Saudi Arabia. The statement of claim asserts that the Ministry of Defence and Aviation called for the construction of the roads when it became "evident that the preparations for war would involve considerable congestion on certain roads in the eastern and northern regions".

155. On 21 December 1990, a Royal Decree was issued authorising the award of the road construction contract to a local contractor. The Royal Decree stated that the Ministry of Defence and Aviation had requested the roadwork "for transfer of troops and logistics purposes". The contract, dated 21 February 1991, was for the construction of four "alternative roads" totalling 980 kilometres in the northeastern region of Saudi Arabia. The contract period was stated to run from 1 May 1991 to 30 December 1993.

156. A second Royal Decree was issued on 3 September 1991, approving the Claimant's request to "alter certain road specifications and ensuring review of priorities and uses following liberation of Kuwait". The contract price was increased accordingly. No further details of the contract variation were provided.

157. The Claimant stated that:

> "...the roads were constructed in anticipation of being used for movement of traffic if and when the roads adjacent to the borders with Iraqi-held Kuwait were closed. During the war period border roads adjacent to Iraq were virtually closed. As to being able to

differentiate between military and non-military traffic movements, this is practically impossible."

158. The Claimant seeks compensation in the amount of SAR 177,000,000, representing approximately 25 per cent of the total cost of the road construction contract. The Claimant asserts that this figure allows for betterment and continuing use of the roads after the period of Iraq's invasion and occupation of Kuwait.

(ii) Analysis and valuation

159. The Panel finds that the evidence provided is insufficient to demonstrate that the costs, which were incurred by the Claimant after the period of Iraq's invasion and occupation of Kuwait, were a direct loss resulting from Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation for this claim.

(d) Overtime and additional staff costs (SAR 3,792,172)

(i) Facts and contentions

160. The Claimant asserts that during the period of Iraq's invasion and occupation of Kuwait, 536 staff members were assigned to various maintenance centres in the central, northern and eastern regions "to monitor roads continuously to ensure their serviceability at all times" and to arrange detours for "emergency use at bridges and tunnels, where these were vulnerable to damage". The Claimant seeks compensation for the costs, including of food and accommodation, incurred in seconding these staff members. Employees were seconded primarily in the Northern and Eastern Provinces. Employees were also assigned to be on 24-hour call at the Claimant's headquarters in Riyadh and at vital points in the road system to ensure the uninterrupted flow of traffic and to take immediate action to repair damage or clear accidents.

161. The Claimant also seeks compensation for overtime paid to 604 staff members. The overtime was mainly performed by staff in the Eastern Province.

(ii) Analysis and valuation

162. The evidence demonstrates that most of the overtime and secondment took place in the Eastern and Northern Provinces where Allied Coalition Forces', including Saudi Arabian, troops were mobilised. The Panel notes the evidence provided in support of the other loss elements of this Claim that indicates the presence of heavy traffic, in particular military traffic, in Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait.

163. The Panel finds that the evidence is insufficient to demonstrate that the overtime and additional staff costs were incurred for any purpose other than to direct and assist military traffic and therefore that the increased

staff costs were costs incurred in providing support in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 64 above, the Panel recommends no award of compensation for these costs.

(e) Recommendation

164. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

3. Recommendation for Ministry of Communications

165. Based on its findings regarding the Claim by the Ministry of Communications, the Panel recommends no award of compensation.

Table 4. Recommended compensation for Ministry of Communications

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Real Property	98,565,828	98,565,828	nil
Public service expenditures	187,724,039	187,724,039	nil
Total	286,289,867	286,289,867	nil

D. Real Estate Development Fund (UNCC Claim No. 5000200)

166. The Claimant is an entity controlled and subsidised by the Government of Saudi Arabia. Its resources are allocated from the general budget of the Government of Saudi Arabia. Its functions include providing Saudi Arabian citizens with interest-free short and long term housing loans and equipping and allocating Government funded apartments and houses ("housing units") to eligible Saudi Arabian citizens.

1. Payment or relief to others (SAR 230,953,745)

(a) Loss of income (SAR 148,137,500)

(i) Facts and contentions

167. The Claimant asserts that in accordance with a Royal Decree issued in August 1990, 7,059 apartments and houses were provided rent-free for the accommodation of 86,305 Kuwaiti refugees in seven major Saudi Arabian cities: Riyadh, Dammam, Jeddah, Qassim, Qatif, Ahsa and Khobar. The Claimant seeks compensation equivalent to the "notional rental costs" of the accommodation for the seven month period of Iraq's invasion and occupation of Kuwait.

168. The Claimant states that one of its duties under normal circumstances is to allocate housing units built by the Ministry of Public Works and Housing to Saudi Arabian nationals. The housing units in which the refugees were accommodated had been handed over to the Claimant by a decision of the Council of Ministers dated 6 March 1989 for allocation to, and purchase by, Saudi Arabian nationals. The housing units were vacant on 2 August 1990.

169. In its response to the article 34 notification, the Claimant sought to increase the amount claimed with respect to provision of accommodation to Kuwaiti refugees from SAR 148,137,500 to SAR 148,435,000.

(ii) Analysis and valuation

170. The Panel in its First Report held that a claimant is not permitted to increase the amount claimed for loss types of a claim by way of its response to an article 34 notification. 57/ The amount claimed for "notional rental costs" is therefore limited to SAR 148,137,500.

171. The Panel finds that allocating the housing units to the refugees delayed the allocation of the housing units to Saudi Arabian nationals and the consequent receipt of purchase proceeds from these Saudi Arabian nationals. The Claimant uses these proceeds to grant interest-free loans to Saudi Arabian nationals to buy land or property. The Panel finds that although the costs of providing assistance to refugees are, in principle, compensable, 58/ the delay in allocating housing units to Saudi Arabian nationals did not result in any financial loss to the Claimant. Therefore the Panel recommends no award of compensation for loss of income.

(b) Guards, maintenance, repair and furnishings (SAR 77,458,602)

(i) Facts and contentions

172. The Claimant seeks compensation for the costs of hiring security guards, and equipping, furnishing, maintaining and repairing the housing units provided to Kuwaiti refugees.

173. The Claimant asserts that the security guards were employed under contract on a 24-hour basis to maintain order at entry and exit points and to check the identities of visitors to the housing projects occupied by the refugees.

174. The Claimant further asserts that maintenance and repair works were carried out during the period from 2 August 1990 to the end of 1994. The Claimant alleges that the work was required to prepare the housing units for occupation by the refugees and to repair, after their departure, damage caused by the refugees. The Claimant states that it signed "continued maintenance contracts" for these purposes.

175. The Claimant further states that as the housing units are normally provided to Saudi Arabian nationals unfurnished, furniture had to be acquired at the Al Khobar housing complex. Due to the urgent need for furniture, no tender process was entered into. The Claimant stated that as a humanitarian gesture, the refugees were allowed to take the furniture with them upon their departure from Saudi Arabian Arabia, in the expectation that their houses in Kuwait would be empty. As half of the Al Khobar housing units were used to accommodate refugees while the remaining half were used to accommodate members of the Allied Coalition Forces, the Claimant has reduced the amount claimed in respect of furniture accordingly.

176. In its response to the article 34 notification, the Claimant purported to increase the amount claimed in respect of security guards, maintenance, equipment and furnishings from SAR 77,458,602 to SAR 158,374,618.

(ii) Analysis and valuation

177. For the reasons stated in paragraph 170 above, the Panel finds that the claim amount is limited to SAR 77,458,602.

178. For the reasons stated at paragraph 49 above, the Panel finds that costs incurred in guarding, maintaining, repairing and furnishing the refugee accommodation are, in principle, compensable. The Panel has made adjustments for residual value to the amount claimed for furnishing refugee accommodation in accordance with paragraph 76 above.

179. During the on-site inspection of a housing project in Riyadh used to accommodate refugees, the Claimant stated that the vacant properties had been guarded prior to the arrival and accommodation of the refugees. The

Panel finds that only incremental costs of guarding are, in principle, compensable, and therefore the amount claimed with respect to guarding refugee accommodation is reduced accordingly.

180. The Panel notes that the evidence provided for maintenance and repair included contracts, invoices and payment orders dated between June 1989 and September 1994. Some repair work must have been carried out after 2 March 1991, given that not all the refugees left Saudi Arabia immediately after the liberation of Kuwait. 59/ The Panel therefore finds it reasonable to expect that contracts for all repair and maintenance work necessitated by accommodating the refugees would have been entered into within five months of the date of the cease-fire, that is, on or before 2 August 1991. The amount claimed with respect to maintenance and repair is reduced accordingly to reflect the costs incurred in maintaining and repairing refugee accommodation during the period from 2 August 1990 to 2 August 1991.

181. The Panel notes that some of the contracts for maintenance and repair that were provided in support of the Claim related to housing projects where members of the Allied Coalition Forces were accommodated. These costs are excluded by reason of Governing Council decision 19, 60/ and the Panel has reduced the amount claimed accordingly. The Panel has made adjustments for residual value to the amount claimed for furniture in accordance with paragraph 77 above.

182. In the light of the evidence, the Panel recommends an award of SAR 58,395,560 in respect of guarding, equipping, furnishing, maintaining and repairing refugee accommodation.

(c) Utilities and overtime (SAR 5,357,643)

(i) Facts and contentions

183. The Claimant seeks compensation in the amount of SAR 3,802,343 for the costs of water and electricity consumed by the refugees during the period of their stay. The Claimant also seeks compensation in the amount of SAR 1,555,300 for remuneration and overtime paid to the Claimant's employees who were engaged in equipping and preparing the refugee accommodation, as well as to additional staff recruited to assist the refugees. In its response to the article 34 notification, the Claimant purported to increase the amount claimed with respect to utility costs from SAR 3,802,343 to SAR 8,290,826.

(ii) Analysis and valuation

184. For the reasons stated at paragraph 170 above, the Panel finds that the claim for utilities is limited to SAR 3,802,343.

185. Pursuant to the findings in paragraph 49 above, the Panel finds that the costs incurred in providing water and electricity for refugee accommodation are, in principle, compensable.

186. With respect to the claim for remuneration and overtime paid to staff who assisted refugees, the Panel finds that pursuant to its findings at paragraphs 52 to 53 above, overtime paid to the Claimant's staff and remuneration paid to additional staff specifically recruited to assist in the refugee relief operation are, in principle, compensable. However, for the reasons stated at paragraph 54 above, the Panel recommends no award of compensation for regular staff salaries.

187. In determining the amount to be awarded with respect to overtime and additional remuneration, the Panel ensured that none of the amounts claimed were incurred with respect to Allied Coalition Forces' accommodation.

188. In the light of the evidence, the Panel recommends an award of SAR 4,937,260 for utilities and remuneration and overtime costs.

(d) Recommendation

189. Based on its findings, the Panel recommends an award of SAR 63,332,820 for payment or relief to others.

2. Public service expenditures (SAR 116,873,515)

(a) Facts and contentions

190. The Claimant asserts that it provided 3,615 apartments and houses in two major cities, Riyadh and Khobar, to members of the Allied Coalition Forces during the period of Iraq's invasion and occupation of Kuwait. The Claimant seeks compensation for the "notional rental costs" of the Allied Coalition Forces' accommodation for the seven month period of Iraq's invasion and occupation of Kuwait.

191. The Claimant also seeks compensation for the costs of hiring security guards for the accommodation provided to members of the Allied Coalition Forces, as well as for the costs of maintaining the housing units and providing water and electricity. The Claimant also seeks compensation for salaries paid to its employees who were engaged in equipping and preparing the Allied Coalition Forces' accommodation.

192. During the on-site inspection, the Claimant reduced the amount claimed for public service expenditures to SAR 102,745,787.

(b) Analysis and valuation

193. The Panel finds that the costs of guarding, furnishing and maintaining Allied Coalition Forces' accommodation were incurred in providing support in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 40 above, the Panel recommends no award of compensation for these costs. Similarly, for the reasons stated at paragraph 64 above, the Panel recommends no award of compensation

for salary costs incurred in providing support to the Allied Coalition Forces.

(c) Recommendation

194. Based on its findings, the Panel recommends no award of compensation in respect of public service expenditures.

3. Recommendation for Real Estate Development Fund

195. Based on its findings regarding the Claim by the Real Estate Development Fund, the Panel recommends compensation in the total amount of SAR 63,332,820.

Table 5. Recommended compensation for Real Estate Development Fund

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Payment or relief to others	230,953,745	230,953,745	63,332,820
Public service expenditures	116,873,515	102,745,787	nil
Total	347,827,260	333,699,532	63,332,820

E. Ministry of Post, Telegraph and Telephone (General Directorate of Post and Deputy Ministry of Operations and Maintenance) (UNCC Claim No. 5000210)

196. The Ministry of Post, Telegraph and Telephone (the "Ministry of PTT") has filed five Claims, comprising the Claims of the General Directorate of Post and Deputy Ministry of Operations and Maintenance, and four Ministry of PTT regions, seeking compensation for direct losses asserted to have occurred as a result of Iraq's invasion and occupation of Kuwait. The Ministry of PTT was a Saudi Arabian Government entity during the period of Iraq's invasion and occupation of Kuwait.

197. In addition to claims for damage to real and tangible property, the five Ministry of PTT Claimants also seek compensation for costs incurred in implementing the Ministry of PTT's emergency procedures to ensure adequate telecommunications capacity during the period of Iraq's invasion and occupation of Kuwait. The expenditures were incurred in respect of emergency equipment, overtime and secondment of staff.

198. During the on-site inspection, the Claimant asserted that three or four years prior to Iraq's invasion and occupation of Kuwait, emergency operations procedures were established for implementation in the event of disruption to the telecommunications network. The procedures involve four stages of alert, brown, orange, yellow and red, the highest being red alert. Yellow and red alerts, representing states of imminent and actual attack respectively, are issued on a national or regional basis, and apply to every telecommunications building at the Ministry of PTT's headquarters in Riyadh or in each region.

199. The Claimant stated that in response to the threat of military action posed by Iraq to Saudi Arabia, a condition of yellow alert went into effect from 2 August 1990 until 3 March 1991. Yellow alerts were upgraded to red alerts when Saudi Arabia came under attack.

200. The Claimant further stated that in accordance with the emergency procedures, a National Emergency Committee and district emergency committees were set up. Each district committee co-ordinated with the National Committee with respect to supplies, purchases and repairs. The committees were active in all regions during the period of Iraq's invasion and occupation of Kuwait. Emergency rooms were also established at the Claimant's Riyadh headquarters and in each district to provide facilities for co-ordination of the emergency committees and task forces. These rooms were staffed on a 24-hour basis and were equipped with wireless equipment, hotlines and long distance communications equipment.

201. The Claimant asserts that staff, especially technicians and management staff from each district, were placed on shifts in the field and in exchanges, telephone services administration and customer services centres. Staff were also required to effect repairs on a 24-hour basis in the event of damage or destruction to telecommunications facilities and

switches. Overtime and secondment costs were incurred as a result of these procedures.

202. In accordance with the reasons set out at paragraph 46 above, the Panel finds that the implementation of the Ministry of PTT's emergency procedures was a reasonable and proportionate response to the threat of military action to which Saudi Arabia was exposed during the relevant period. The Panel therefore finds that the reasonable costs incurred by the Ministry of PTT Claimants, as detailed below, in implementing the emergency procedures, including equipping the emergency rooms and manning the emergency committees, setting up emergency telecommunications networks and implementing emergency repair procedures in case of damage to the telecommunications network are, in principle, compensable.

203. The General Directorate of Post ("GDP") and the Deputy Ministry for Operations and Maintenance ("DMOM") were Saudi Arabian Government entities attached to the Ministry of PTT at the time of Iraq's invasion and occupation of Kuwait. The GDP was responsible for postal services throughout the Kingdom of Saudi Arabia, while the DMOM was responsible for providing telecommunications services and overseeing the operation of the entire telecommunications network in Saudi Arabia.

204. In the statement of claim, the GDP sought compensation in the total amount of SAR 523,750. However, the Panel notes that this amount appears to be an arithmetical error, since the loss elements asserted in the statement of claim total SAR 473,750.

1. Real Property (SAR 25,000)

(a) Facts and contentions

205. The GDP seeks compensation for real property damage to two post office buildings in Al Khafji, comprising bullet hole damage and the destruction of doors and windows. The GDP alleges that the damage occurred during the course of the battle of Al Khafji.

(b) Analysis and valuation

206. For the reasons stated at paragraph 37 above, the Panel finds that the claim for real property damage is, in principle, compensable. However, the Panel finds that the evidence is insufficient to verify and value the full amount claimed.

(c) Recommendation

207. In the light of the evidence, the Panel recommends an award of SAR 7,500 for real property.

2. Other tangible property (SAR 58,750)

(a) Facts and contentions

208. The GDP seeks compensation for damage to furniture and the theft of a car and items of equipment from the two post office buildings in Al Khafji. These losses are alleged to have occurred during Iraq's occupation of Al Khafji.

209. The GDP further alleges that Iraqi troops caused damage to furniture and equipment belonging to the post offices in Al Raqa'i and Al Hamatiyat, on the border between Saudi Arabia and Iraq. The GDP alleges that the troops looted items of tangible property from the post office buildings during this period.

(b) Analysis and valuation

210. For the reasons stated at paragraphs 37 and 107 above, the Panel finds that the claim for other tangible property damage is, in principle, compensable. Adjustments for depreciation to the amount claimed were made in accordance with paragraph 76 above.

(c) Recommendation

211. In the light of the evidence, the Panel recommends an award of SAR 7,313 for other tangible property.

3. Public service expenditures - DMOM (SAR 2,701,844)

(a) Facts and contentions

212. The Claimant seeks compensation in the amount of SAR 783,707 for the purchase of emergency equipment, including gas masks and protective clothing. The amounts claimed are based upon the cost of the assets, pro-rated to account for use of the assets after the liberation of Kuwait.

213. The Claimant also seeks compensation for overtime and secondment of staff. In the statement of claim, the Claimant alleges that:

> "The increase in the usage of the network and its functioning had an immediate effect on many of the technicians who had to carry out supplementary work and involved relocation to many scattered areas."

214. The amount asserted in the statement of claim in respect of these costs was SAR 1,918,137, which was reduced by the Claimant in its response to the article 34 notification to SAR 1,213,686. This amount comprises SAR 713,655 for overtime and SAR 500,031 for secondment of staff.

(b) Analysis and valuation

215. The Panel finds that for the reasons stated at paragraph 202 above, the costs of purchasing equipment in accordance with the Claimant's emergency procedures are, in principle, compensable.

216. Similarly, the Panel finds that for the reasons stated at paragraphs 56 to 57 and 202 above, incremental costs of overtime performed by staff in setting up and maintaining the emergency operations rooms and participating in the emergency committees in accordance with the Claimant's emergency procedures are, in principle, compensable.

217. In support of its claim for secondment costs, the Claimant provided written authorizations for the secondment of staff to man mobile satellite stations for use by the Allied Coalition Forces in Kuwait. The Panel finds that the secondment costs were incurred in providing support in relation to the activities of the Allied Coalition Forces in Kuwait. For the reasons stated at paragraph 64 above, the Panel recommends no award of compensation for these costs.

(c) Recommendation

218. In the light of the evidence, the Panel recommends an award of SAR 1,030,265 for public service expenditures incurred by DMOM.

4. Public service expenditures - GDP (SAR 390,000)

(a) Facts and contentions

219. The Claimant seeks compensation in the amount of SAR 310,000 for costs it allegedly incurred in relation to unscheduled "surface mail flights" between a number of cities in Saudi Arabia.

220. In written answers provided to questions raised prior to and during the on-site inspection, the Claimant asserted that air flights in Saudi Arabia ceased as a result of Iraq's invasion and occupation of Kuwait, causing disruption to air mail services. As a result, the Claimant had to rent trucks for the transport of intra and inter-city mail. During the on-site inspection, the Claimant also stated that cars were purchased to transport mail in the event of disruption to regular airmail services. The cars remained in regular use by the Claimant after the liberation of Kuwait. No further details or explanation of the claim were provided.

221. The Claimant also seeks compensation in the amount of SAR 80,000 for the costs of setting up an "emergency office" at the GDP in Riyadh. This amount was originally described in the supporting documentation as "losses of the operations room at the building of the General Directorate for Post". However, during the on-site inspection, the Claimant confirmed that the amount represented the cost of constructing the GDP's emergency room. No evidence was provided in support of the claim.

(b) Analysis and valuation

222. The Panel finds that the Claimant has not provided evidence sufficient to demonstrate or explain the circumstances of the claim for unscheduled "surface mail flights" and therefore recommends no award of compensation. Similarly, the Panel finds that the Claimant has not provided evidence sufficient to verify and value its claim for costs of constructing the GDP's emergency room in Riyadh and therefore recommends no award of compensation.

(c) Recommendation

223. Based on its findings, the Panel recommends no award of compensation for the GDP's claim for public service expenditures.

5. Recommendation for Ministry of PTT, GDP and DMOM

224. Based on its findings regarding the Claim by the Ministry of PTT, GDP and DMOM, the Panel recommends compensation in the total amount of SAR 1,045,078.

Table 6. Recommended compensation for Ministry of PTT, GDP and DMOM

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Real property (GDP)	25,000	25,000	7,500
Other tangible property (GDP)	58,750	58,750	7,313
Public service expenditures (DMOM)	2,701,844	1,997,393	1,030,265
Public service expenditures (GDP)	390,000	390,000	nil
Total	3,175,594	2,471,143	1,045,078

F. Ministry of Post, Telegraph and Telephone (Central Region) (UNCC Claim No. 5000211)

225. The Ministry of PTT (Central Region) comprises a central headquarters and four districts, Riyadh City, Riyadh District, Al Qassim and Ha'il. As no breakdown of the amount claimed by each district was provided in the statement of claim, the following breakdown has been taken from the supporting documentation.

1. Public service expenditures (SAR 3,114,000)

(a) Central Region Head Office (SAR 218,000)

(i) Facts and contentions

226. The Central Region Head Office requests compensation in the total amount of SAR 218,000 for the cost of purchasing emergency equipment (SAR 51,000), staff meal costs (SAR 15,000), increased expatriate staff travel costs resulting from increased war risk insurance premiums and re-routing (SAR 102,000) and overtime (SAR 50,000) asserted to have been incurred as a result of Iraq's invasion and occupation of Kuwait.

227. In its response to the article 34 notification, the Claimant sought to increase the amount claimed for overtime performed by staff in the emergency room and in the field from SAR 50,000 to SAR 144,268.

(ii) Analysis and valuation

228. For the reasons stated at paragraph 170 above, the Panel finds that the claim for overtime costs is limited to SAR 50,000.

229. The Panel notes that despite requests in the article 34 notification, written requests for further information and documentation made to the Claimant prior to the on-site inspection, and verbal requests for further information and documentation made during the on-site inspection, no documentary evidence was provided in support of the claim for purchase of equipment.

230. With respect to the claim for staff meals, a limited sample of invoices was provided in support of the claimed amount. No further evidence was provided in support of the claim, despite the requests referred to in the previous paragraph. Similarly, no evidence was provided in support of the amount claimed for increased expatriate staff travel costs.

231. The Panel finds that the Claimant has not provided evidence sufficient to verify and value the claims for emergency equipment, subsistence expenses and increased expatriate staff travel costs. The Panel therefore recommends that no compensation be awarded in respect thereof.

232. In support of the amount claimed for overtime, the evidence indicates that while the majority of the overtime was performed during the period of Iraq's invasion and occupation of Kuwait, some costs were incurred after 2 March 1991.

233. For the reasons stated at paragraph 216 above, the Panel finds that the incremental costs of overtime that were incurred in implementing the Claimant's emergency procedures are, in principle, compensable, to the extent that the overtime was performed during the period from 2 August 1990 to 2 March 1991.

234. In the light of the evidence, the Panel recommends an award of SAR 50,000 for incremental overtime costs incurred by Central Region Head Office.

(b) Riyadh City (SAR 1,425,000)

(i) Facts and contentions

235. The Claimant seeks compensation in the amount of SAR 137,000 for increased expatriate staff travel costs, SAR 72,000 for staff meal costs and SAR 1,216,000 for overtime performed by its staff in order to guarantee the proper functioning of the telecommunications network during the period of Iraq's invasion and occupation of Kuwait.

236. In its response to the article 34 notification, the Claimant reduced the claim for overtime from SAR 1,216,000 to SAR 1,207,073.

(ii) Analysis and valuation

237. The Panel finds that, because no evidence was provided in support of the claims for staff meal costs and increased expatriate staff travel costs despite the requests referred to at paragraph 229 above, it recommends no award of compensation therefor.

238. With respect to the claim for overtime, the Panel notes that the evidence provided indicates that while the majority of the overtime was performed during the period of Iraq's invasion and occupation of Kuwait, some costs were incurred after 2 March 1991.

239. For the reasons stated at paragraph 216 above, the Panel finds that the incremental costs of overtime that were incurred in implementing the Claimant's emergency procedures are, in principle, compensable, to the extent that the overtime was performed during the period from 2 August 1990 to 2 March 1991.

240. In the light of the evidence, the Panel recommends an award of SAR 403,331 for incremental overtime costs incurred by Riyadh City.

(c) Riyadh District (SAR 361,000)

(i) Facts and contentions

241. Riyadh District seeks compensation for increased operational costs, including costs of increased fuel consumption (SAR 50,000), increased vehicle maintenance and spare parts (SAR 50,000), staff meals (SAR 72,000), modifications to buildings and emergency rooms (SAR 39,000), subsistence expenses (SAR 50,000), telephone connections to civil defence units (SAR 200,000), increased expatriate staff travel costs (SAR 104,000) and overtime costs (SAR 68,000).

242. During the on-site inspection, the Claimant stated that the claim for increased vehicle maintenance and spare parts was a duplicate of a claim asserted by Ha'il region and therefore withdrew the duplicate claim.

243. The Claimant asserts that overtime was performed by its staff in order to guarantee the proper functioning of the telecommunications network during the period of Iraq's invasion and occupation of Kuwait. In its response to the article 34 notification, the Claimant sought to increase the amount claimed for overtime from SAR 68,000 to SAR 86,006.

244. In the statement of claim, Riyadh District sought compensation in the total amount of SAR 361,000. However, the Panel notes that the loss elements asserted in the supporting documentation, as set out above, total SAR 633,000.

(ii) Analysis and valuation

245. The Panel finds that the total amount claimed by Riyadh District is limited to SAR 361,000 as claimed in the statement of claim and further, for the reasons stated at paragraph 170 above, that the claim amount for overtime costs is limited to SAR 68,000.

246. The Panel finds that because the Claimant has not provided evidence sufficient to verify and value its claims for increased fuel consumption, staff meal costs, modifications to buildings and emergency rooms, subsistence expenses, telephone connections to civil defence units and increased expatriate staff travel costs, it recommends no award of compensation for these claims.

247. The Panel notes that the evidence provided for overtime costs includes overtime records and an administrative decree authorising overtime to be performed for one month from 17 February 1991. The evidence indicates that the majority of the overtime costs was incurred after 2 March 1991.

248. For the reasons stated at paragraph 216 above, the Panel finds that the incremental costs of overtime that were incurred in implementing the Claimant's emergency procedures are, in principle, compensable, to the

extent that overtime was performed during the period from 2 August 1990 to 2 March 1991.

249. In the light of the evidence, the Panel recommends an award of SAR 16,771 for incremental overtime costs incurred by Riyadh District.

(d) Al Qassim District (SAR 708,000)

(i) Facts and contentions

250. Al Qassim District seeks compensation for increased operational costs, including transport allowances (SAR 5,380), subsistence expenses (SAR 27,130), accommodation (SAR 6,327), modifications to buildings and emergency room (SAR 85,000), telephone connections to housing units for Kuwaiti refugees (SAR 85,737), increased expatriate staff travel costs (SAR 24,455), amounts paid to "staff who stayed behind during the war" (SAR 124,997) and overtime costs (SAR 348,606).

251. In the statement of claim, Al Qassim District sought compensation in the total amount of SAR 708,000. However, the Panel notes that the loss elements asserted in the supporting documentation, as set out above, total SAR 707,632.

(ii) Analysis and valuation

252. The Claimant asserts in its response to the article 34 notification that the amount claimed for accommodation represents "food allowances". However, no further explanation or documentation was provided in support of the claim.

253. In support of its claim for increased expatriate staff travel costs, the Claimant provided a list of increased air fares totalling SAR 9,220. No underlying documentation, such as ticket vouchers, required to verify and value this schedule was provided by the Claimant, despite the requests referred to paragraph 229 above.

254. The Panel finds that because the Claimant has not provided evidence sufficient to verify and value the claims for transport allowances, subsistence expenses, accommodation (food allowances), modifications to buildings and emergency room and increased expatriate staff travel costs, it recommends no award of compensation therefor.

255. The evidence provided in support of the claim for providing telecommunications facilities to refugee camps includes four manpower and contract cost worksheets totalling SAR 52,162 and corresponding authorisations. The worksheets indicate that the work was performed at Buridah housing estate, where refugees were housed during the period of Iraq's invasion and occupation of Kuwait, and are dated October and November 1990. One authorisation, dated November 1991, relates to costs of removing the facilities.

256. The Panel finds that for the reasons stated at paragraphs 52 to 54 above, costs incurred in providing telecommunications services to refugees are, in principle, compensable, provided such costs were reasonable and incremental. However, the Panel recommends no award of compensation for the costs of removing the network in 1991, as the Claimant has failed to establish that the costs of removal were a direct loss resulting from Iraq's invasion and occupation of Kuwait.

257. In support of its claim for "payments made to staff who stayed behind during the war", the Claimant asserted in its response to the article 34 notification that payments were made to reimburse staff who were on vacation when Iraq invaded Kuwait and incurred extra expense in returning to work. However, during the on-site inspection, the Claimant provided a schedule entitled "deductions from expatriates who fail to report to work due to Gulf war", totalling SAR 124,997. The Panel finds that the amount claimed relates to deductions made from expatriate staff salaries and not to any amounts paid by the Claimant. As the Claimant has not incurred any loss, the Panel recommends no award of compensation for the claim.

258. For the reasons stated at paragraph 216 above, the Panel finds that the incremental costs of overtime that were incurred in implementing the Claimant's emergency procedures are, in principle, compensable. However, the Panel notes that despite the requests referred to at paragraph 229 above, the evidence is insufficient to verify and value the full amount claimed.

259. In the light of the evidence, the Panel recommends an award of SAR 60,088 for costs of providing telecommunications services to refugees and incremental overtime costs incurred by Al Qassim District.

(e) Ha'il District (SAR 202,000)

(i) Facts and contentions

260. Ha'il District seeks compensation for increased expatriate staff travel costs (SAR 29,000), additional spare parts and maintenance (SAR 50,000), furniture for the emergency room (SAR 20,000), subsistence expenses (SAR 10,000) and overtime costs (SAR 93,000).

261. The Claimant asserts that overtime was performed in order to guarantee the proper functioning of the telecommunications network during the period of Iraq's invasion and occupation of Kuwait. In its response to the article 34 notification, the Claimant sought to increase the amount claimed for overtime from SAR 93,000 to SAR 100,852.

(ii) Analysis and valuation

262. For the reasons stated at paragraph 170 above, the Panel finds that the amount claimed for overtime is limited to SAR 93,000.

263. The Panel finds that because the Claimant has not provided evidence sufficient to verify and value the claims for increased expatriate staff travel costs, additional spare parts and maintenance and subsistence expenses, it recommends no award of compensation for these claims.

264. For the reasons stated in paragraph 215 above, the Panel finds that the cost of purchasing furniture for the emergency room is, in principle, compensable. Adjustments for residual value have been made in accordance with paragraph 76 above.

265. The evidence provided for overtime costs indicates that all the overtime was performed during the period of Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 216 above, the Panel finds that the incremental costs of overtime that were incurred in implementing the Claimant's emergency procedures are, in principle, compensable.

266. In the light of the evidence, the Panel recommends an award of SAR 44,183 for purchase of furniture and incremental overtime costs incurred by Ha'il District.

(f) General services (SAR 200,000)

267. In its statement of claim, the Claimant sought compensation in the amount of SAR 200,000 for "the costs of general services provided by the CRT directly related to the invasion and occupation of Kuwait." During the on-site inspection, the Claimant stated that the claim related to assistance provided to the Allied Coalition Forces and therefore withdrew the claim.

268. The Panel takes note of the Claimant's withdrawal of the claim for general services.

(g) Recommendation

269. In the light of the evidence, the Panel recommends an award of SAR 574,373 for public service expenditures.

2. Recommendation for Ministry of PTT, Central Region

270. Based on its findings regarding the Claim by the Ministry of PTT, Central Region, the Panel recommends an award of compensation in the total amount of SAR 574,373.

Table 7. Recommended compensation for Ministry of PTT, Central Region

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Public service expenditures	3,114,000	2,905,073	574,373
Total	3,114,000	2,905,073	574,373

G. Ministry of Post, Telegraph and Telephone (Southern Region) (UNCC Claim No. 5000212)

271. The Ministry of PTT (Southern Region) comprises a central headquarters and three districts bordering Saudi Arabia's southern border with Yemen.

1. Business transaction or course of dealing (SAR 300,000)

(a) Facts and contentions

272. The Claimant seeks compensation for loss of revenue alleged to result from the delayed installation of 600 telephone lines. The Claimant asserts that the contractor for the installation of the telephone lines was urgently requested to install a telephone network for the use of the Saudi Arabian Armed Forces, and that as a result, the installation of the lines was delayed. The Claimant asserts that no other contractors were available to carry out the work.

273. The Claimant further states that the contractor experienced a delay of 45 days in performing the contract, and that when the telephone lines became available, a waiting list of subscribers for the lines existed. No further explanation of or supporting documentation for this alleged loss were provided.

(b) Analysis and valuation

274. The Panel finds that the evidence is insufficient to demonstrate that installation of the telephone lines was delayed or that the Claimant suffered a consequent loss of revenue as a result of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation for the claim.

(c) Recommendation

275. In the light of the evidence, the Panel recommends no award of compensation for business transaction or course of dealing.

2. Public service expenditures (SAR 2,448,357)

(a) Increased staff costs (SAR 2,239,510)

(i) Facts and contentions

276. The Claimant seeks compensation for increased staff costs, including overtime and secondment costs, incurred as a result of staff performing shift work in the Claimant's technical unit, emergency room and other departments.

277. The Claimant asserts that employees were seconded to Saudi Arabia's southern border to inspect, during the period of Iraq's invasion and

occupation of Kuwait, all telephone installations and facilities in the field. The Claimant also asserts that some of the employees who were seconded were also required to perform overtime, and that secondment was necessary due to:

> "...the presence of border posts in the area; the sensitivity of telecommunication facilities and the need to maintain their operation on a 24-hour basis; the need for continuous field supervision of facilities and supplies".

278. The Claimant further asserted that maintenance of the network at full capacity was necessary as (i) Yemen had supported Iraq during its invasion and occupation of Kuwait, and (ii) continuous pressure on the different network elements resulted in failure of the network. As a result, technicians were seconded from central headquarters to the three districts (Asir, Najarn, and Jizan) to perform maintenance and repair services.

279. In its statement of claim, the Claimant sought compensation in the amount of SAR 2,239,510 for increased staff costs. In its response to the article 34 notification, the Claimant stated that the amount claimed comprised SAR 1,155,590 for overtime and SAR 547,218 for secondment costs, thereby reducing the amount claimed for increased staff costs to SAR 1,702,808.

(ii) Analysis and valuation

280. For the reasons stated at paragraph 216 above, the Panel finds that the incremental costs of overtime that were incurred in implementing the Claimant's emergency procedures are, in principle, compensable.

281. For the reasons stated at paragraph 64 above, the Panel recommends no award of compensation for any overtime costs that were incurred in providing support in relation to the activities of the Allied Coalition Forces, including the Saudi Arabian Armed Forces, and their military response to Iraq's invasion and occupation of Kuwait.

282. The Panel also finds that procedures that were implemented in response to the perceived threats to security along the border with Yemen were not implemented in response to the threat of military action posed by Iraq. 61/ The Panel finds that the secondment costs were not a direct loss resulting from Iraq's invasion and occupation of Kuwait and therefore recommends no award of compensation for these costs.

283. In the light of the evidence, the Panel recommends an award of SAR 520,016 in respect of incremental overtime costs.

(b) Increased expatriate staff travel costs (SAR 185,000)

(i) Facts and contentions

284. The Claimant seeks compensation for increased expatriate staff travel costs, which resulted from re-routing, the change in status of airline tickets from discount to full economy and the imposition of increased war risk insurance premiums on airline tickets. No evidence was provided in support of the claim.

(ii) Analysis and valuation

285. For the reasons stated at paragraphs 61 to 63 above, the Panel finds that increased expatriate staff travel costs resulting from the imposition of war risk insurance premiums and re-routing are, in principle, compensable.

286. However, the Panel finds that because the Claimant has not provided evidence sufficient to verify and value the claim, it therefore recommends no award of compensation.

(c) Installation of emergency network (SAR 23,847)

(i) Facts and contentions

287. The Claimant seeks compensation for the cost of installing an emergency communications network "for use by the Army" in the Jizan province close to the border with Yemen. The Claimant asserts that some of the emergency hotlines are still in operation and are used to connect villages along the border with Yemen.

288. The Claimant in its statement of claim sought compensation in the amount of SAR 23,847, taking into account the fact that some of the lines are still in use and that the network was used for military purposes. However, in its response to the article 34 notification the Claimant stated that the alleged original cost of installing the emergency network was SAR 1,021,999.

(ii) Analysis and valuation

289. For the reasons stated at paragraph 170 above, the Panel finds that the claim amount is limited to SAR 23,847.

290. The Panel finds that the costs of installing an emergency communications network for the Saudi Arabian Army in Jizan province were not direct costs resulting from Iraq's invasion and occupation of Kuwait and therefore recommends no award of compensation.

(d) Recommendation

291. Based on its findings, the Panel recommends an award of SAR 520,016 for public service expenditures.

3. Recommendation for Ministry of PTT, Southern Region

292. Based on its findings regarding the Claim by the Ministry of PTT, Southern Region, the Panel recommends compensation in the total amount of SAR 520,016.

Table 8. Recommended compensation for Ministry of PTT, Southern Region

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Business transaction or course of dealing	300,000	300,000	nil
Public service expenditures	2,448,357	1,911,655	520,016
Total	2,748,357	2,211,655	520,016

H. Ministry of Post, Telegraph and Telephone (Eastern Region) (UNCC Claim No. 5000213)

1. Business transaction or course of dealing (SAR 1,774,640)

(a) Facts and contentions

293. The Claimant seeks compensation in the amount of SAR 5,047 for telephone bills not paid by the Iraqi Land Transport Office of the Iraqi Ministry of Transportation in Dammam. The Claimant asserts that the telephone lines to the Iraqi Office were disconnected in October 1990. The Embassy of Iraq in Riyadh informed the Ministry of PTT that it was unable to pay the outstanding bills because its bank assets in Saudi Arabia had been frozen, and that the bills would be forwarded to the Iraqi Ministry of Transport to settle.

294. In its statement of claim, the Claimant also sought compensation in the amount of SAR 1,769,593 for telephone services provided to the French Forces that were based in the region during the period of Iraq's invasion and occupation of Kuwait. However, during the on-site inspection the Claimant withdrew this part of the claim.

(b) Analysis and Valuation

295. The Panel finds that the non-payment of the Iraqi Land Transportation Office's telephone bills results from the freezing of Iraqi assets in Saudi Arabia as a result of the trade embargo imposed pursuant to Security Council resolution 661 (1990). Claims for losses alleged to have been incurred as a result of the trade embargo are precluded from compensation by paragraph 6 of Governing Council decision 9. The Panel therefore recommends no award of compensation for the claim.

(c) Recommendation

296. Based on its findings, the Panel recommends no award of compensation for business transaction or course of dealing.

2. Real property (SAR 1,639,595)

(a) Facts and contentions

297. The Claimant seeks to recover the cost of repairing the telegraph building at Al Khafji and the central telephone exchanges at Al Khafji and Al Samah. The Claimant alleges that the buildings were damaged during the military operations that took place in the Eastern Province of Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait.

298. The Claimant seeks compensation in the amount of SAR 492,550 for repair of the Al Khafji telegraph building. During the on-site inspection to Al Khafji, the Claimant asserted that the telegraph building suffered damage by artillery fire and that an Iraqi tank was driven into the front entrance. The Claimant also asserted that smoke from the Kuwaiti oil

fields that had been ignited by departing Iraqi troops damaged the decorations and furnishings in the building.

299. The Claimant also seeks compensation in the amount of SAR 897,045 for repairs of the Al Khafji telephone exchange and an amount of SAR 250,000 for damage to the Al Samah telephone exchange building. In both cases, the Claimant asserts that artillery and gunfire caused the damage.

(b) Analysis and valuation

300. For the reasons stated at paragraph 37 above, the Panel finds that the claim for real property damage to the telegraph and telephone exchanges is, in principle, compensable.

301. In support of its claim for real property damage, the Claimant provided, inter alia, contemporaneous video footage of the damage caused to the town of Al Khafji as a result of the occupation by Iraqi troops and the subsequent battle to liberate the town. The footage depicted damage suffered by the Al Khafji telephone exchange building. Contemporaneous photographs of the damage to the three buildings in Al Khafji and Al Samah were also provided during the on-site inspection.

302. In the light of the evidence and the adjustments for depreciation made in accordance with paragraph 76 above, the Panel recommends an award of compensation in the amount of SAR 208,449 for real property damage to the Al Khafji telegraph and telephone exchange buildings.

303. With respect to the claim for repairs to the Al Samah exchange building, the Panel finds that the evidence is insufficient to verify and value the full amount claimed. The Panel therefore recommends an award of compensation in the amount of SAR 79,821 for repair of the Al Samah telephone exchange building.

(c) Recommendation

304. Based on its findings, the Panel recommends an award of SAR 288,270 for real property.

3. Other tangible property (SAR 3,702,648)

(a) Facts and contentions

305. The Claimant seeks compensation in the total amount of SAR 3,702,648 for replacement or repair of telephone exchange equipment, electrical and auxiliary electrical power connections, air conditioning units, control boards, telephones, furniture, equipment and vehicles that it asserts were damaged or lost during the military operations in Al Khafji. The claim also includes a claim for the supply of cables.

(b) Analysis and valuation

306. For the reasons stated at paragraph 37 above, the Panel finds that the claim for other tangible property damage relating to telephone exchange equipment, electrical and auxiliary electrical power, air conditioning units, control boards, telephones, furniture and equipment is, in principle, compensable. Adjustments for depreciation to the amount claimed were made in accordance with paragraph 76 above.

307. With respect to the claim for loss of vehicles, the Claimant provided three supply contracts, dated 21 and 23 August 1990, for the supply of 22 vehicles. The Claimant asserts that the vehicles were purchased in accordance with the emergency procedures referred to at paragraphs 198 to 202 above, and further, that the vehicles that were parked next to the telephone exchange building in Al Khafji were lost, stolen or destroyed as a result of the military operations that took place in that town. No evidence was provided to indicate the total number of vehicles that was lost, stolen or destroyed. However, the video footage provided by the Claimant showed damage to a small number of PTT vehicles. The Panel has reduced the amount claimed for loss of vehicles accordingly.

308. The evidence provided in support of the claim for supply of cables includes contracts for the purchase of the cables dated February and April 1992. The Panel finds that the Claimant has provided insufficient evidence to demonstrate that the cables were purchased to replace cables that were destroyed during military operations in Al Khafji. The Panel therefore recommends no award of compensation for supply of cables.

(c) Recommendation

309. In the light of the evidence, the Panel recommends an award of SAR 457,712 for other tangible property.

4. Public service expenditures (SAR 2,466,967)

(a) Facts and contentions

310. The Claimant seeks compensation in the amount of SAR 2,452,114 for overtime and secondment costs. The Claimant asserts that certain employees, especially those attached to the technical section, worked overtime to maintain the efficiency of the network in the Eastern region and to carry out rapid repairs to the network, should the need arise.

311. In its response to the article 34 notification, the Claimant stated that overtime costs amount to SAR 2,501,800 and secondment costs to SAR 172,686, thereby increasing the amount claimed for overtime and secondment costs from SAR 2,452,114 to SAR 2,674,486.

312. The Claimant also seeks SAR 14,853 for increased expatriate staff travel costs alleged to result from the imposition of war risk insurance on

airfares for staff who travelled during the period of Iraq's invasion and occupation of Kuwait.

(b) Analysis and valuation

313. For the reasons stated at paragraph 170 above, the Panel finds that the claim amount for overtime and secondment costs is limited to SAR 2,452,114.

314. For the reasons stated at paragraph 216 above, the Panel finds that the incremental costs of overtime that were incurred in implementing the Claimant's emergency procedures are, in principle, compensable.

315. The evidence provided in support of the claim for overtime included authorized overtime records indicating the names of the employees, the periods during which overtime was performed and the costs that were incurred. The dates on the majority of the overtime records were omitted in the course of reproduction. Where records were dated, some indicated that overtime was performed in March 1991. The Panel finds that only those costs of overtime which relate to the period from 2 August 1990 to 2 March 1991 are, in principle, compensable.

316. Records provided in support of the claim for secondment indicate that all of the secondment took place during the period of Iraq's invasion and occupation of Kuwait.

317. During the on-site inspection, the Claimant stated that some of the overtime and secondment costs were incurred in providing assistance to the Allied Coalition Forces stationed in the Eastern Province of Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait. However, the Claimant's written response to questions posed during the on-site inspection stated that the overtime and secondment costs were incurred for emergency maintenance and repair work only.

318. For the reasons stated at paragraph 64 above, the Panel recommends no award of compensation for any overtime and secondment costs that were incurred in providing support to the Allied Coalition Forces.

319. With respect to the claim for increased travel costs, the evidence provided included a schedule of the increased cost of travel for six families. The schedule, which totals SAR 29,711, states that the calculation of the loss is based on estimates as ticket prices fluctuated during the period of Iraq's invasion and occupation of Kuwait. The Claimant provided no underlying documentation in support of the schedule.

320. The Panel finds that the evidence is insufficient to verify and value the claim for increased expatriate staff travel costs and therefore recommends no award of compensation.

(c) Recommendation

321. In the light of the evidence in respect of overtime and secondment, the Panel recommends an award of SAR 489,178 for public service expenditures.

5. Recommendation for Ministry of PTT, Eastern Region

322. Based on its findings regarding the Claim by the Ministry of PTT, Eastern Region, the Panel recommends compensation in the total amount of SAR 1,235,160.

Table 9. Recommended compensation for Ministry of PTT, Eastern Region

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Business transaction or course of dealing	1,774,640	5,047	nil
Real property	1,639,595	1,639,595	288,270
Other tangible property	3,702,648	3,702,648	457,712
Public service expenditures	2,466,967	2,466,967	489,178
Total	9,583,850	7,814,257	1,235,160

I. Ministry of Post, Telegraph and Telephone (Western Region) (UNCC Claim No. 5000214)

1. Public service expenditures (SAR 4,438,000)

(a) Facts and contentions

323. The Claimant seeks compensation for increased staff costs, including overtime and secondment costs, which it alleges it incurred during the period from 2 August 1990 to 2 March 1991 in Jeddah, Mecca, Al Ta'if, Medinah, Yanbu, Baha and Tabbak.

324. The Claimant asserts that the amounts claimed were paid to staff who performed the following duties: providing technical assistance for exchanges and operators; participating in stand-by and emergency teams on 24-hour call to maintain continuous operation of the telecommunications system; guarding exchanges and telecommunications centres; establishing emergency rooms to monitor the network; providing telecommunications services to the Kuwaiti Royal Family and the Government of Kuwait in exile, which both sought refuge in Saudi Arabia; and providing telecommunications services to refugees in the region.

325. In its statement of claim, the Claimant sought compensation in the amount of SAR 4,438,000 for overtime and secondment costs. However, the Claimant stated in its response to the article 34 notification that the total overtime costs amounted to SAR 5,304,564.

(b) Analysis and valuation

326. For the reasons stated at paragraph 170 above, the Panel finds that the claim amount is limited to SAR 4,438,000.

327. For the reasons stated at paragraph 216 above, the Panel finds that incremental staff costs that were incurred in implementing the Claimant's emergency procedures are, in principle, compensable.

328. The Panel further finds that for the reasons stated at paragraphs 52 to 54, incremental staff costs incurred in providing telecommunications services to the Kuwaiti Royal Family, the Government of Kuwait in exile and refugees are, in principle, compensable.

329. However, for the reasons stated at paragraph 282 above, the Panel finds that costs incurred in guarding PTT buildings and installations in the Western Region are not direct losses caused by Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation for these costs.

330. The evidence provided in support of the claim includes overtime records indicating the names of the employees who performed overtime or were seconded and the periods during which overtime was performed or secondment took place. The evidence indicates that in some cases, overtime

or secondment was performed after 2 March 1991. The Panel finds that only those costs of overtime and secondment that relate to the period from 2 August 1990 to 2 March 1991 are, in principle, compensable.

(c) Recommendation

331. In the light of the evidence, the Panel recommends an award of SAR 1,983,564 for public service expenditures.

2. Recommendation for Ministry of PTT, Western Region

332. Based on its findings regarding the Claim by the Ministry of PTT, Western Region, the Panel recommends compensation in the total amount of SAR 1,983,564.

Table 10. Recommended compensation for Ministry of PTT, Western Region

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Public service expenditures	4,438,000	4,438,000	1,983,564
Total	4,438,000	4,438,000	1,983,564

J. Ministry of Health (UNCC Claim No. 5000215)

333. The Ministry of Health provides health services for both urban and rural areas throughout Saudi Arabia.

334. Claims have been filed by the Ministry of Health in Riyadh (UNCC Claim No. 5000215) and the Ministry of Health in Al Khafji (UNCC Claim No. 5000230). A review of the evidence indicates that the Claim of the Ministry of Health in Al Khafji is included in the Claim of the Riyadh headquarters, which was confirmed by a Note Verbale dated 29 October 1999 from the Permanent Mission of the Kingdom of Saudi Arabia to the United Nations and other international organisations in Geneva. The claims of the Ministry of Health and the Ministry of Health in Al Khafji will therefore be considered together. 62/

1. Contract (SAR 12,837,918)

(a) Facts and contentions

335. The Claimant seeks compensation for payments which were requested by two contractors in relation to hospital construction projects in Al Khafji, Rafha and Domat Al-Jandal ("Group C Hospital project", SAR 7,970,762) and a project for construction and maintenance of hospital facilities in Ar'ar ("Ar'ar Hospital project", SAR 4,867,156).

(i) Group C Hospital project

336. A contract was entered into in 1984 between the Ministry of Health and Societe General d'Entreprise ("SGE"), a French company, for the construction of three hospitals, each with 100 bed capacity, in Rafha, Domat Al-Jandal and Al Khafji. The original contract price was SAR 362,000,000, with completion to take place within 720 days from the date of handing over the site to the contractor. Although the project was scheduled to be completed in January 1987, the evidence shows that as at 3 November 1989, the contractor had executed approximately 40 per cent of the work and further, that the project was ongoing on 2 August 1990.

337. The Claimant asserts that after concluding the contract in 1984, the Claimant decided that the hospitals to be constructed would not meet its new requirements, and therefore granted SGE an extension of time to redesign the hospital buildings.

338. Work under the contract was delayed during the period of Iraq's invasion and occupation of Kuwait as access to the construction sites, two of which were located on the Saudi Arabian border with Kuwait, was restricted. Work recommenced three months after the liberation of Kuwait.

339. In November 1991, SGE made a claim against the Claimant for losses it alleged it incurred as a result of Iraq's invasion and occupation of Kuwait. These losses included monthly guarantee, insurance and maintenance costs; costs of evacuating staff; expenses resulting from suspension of

work and closing of the Rafha and Damat Al-Jandal sites; emergency purchases; severance pay and return air fares for foreign workers; costs of pre-fabricated structures; overheads; and price increases due to the fluctuating exchange rate of the French franc and the Saudi Arabian riyal.

340. As part of its claim against the Claimant, SGE sought an amount for damage to the Al Khafji hospital site. The evidence provided in support of the claim indicates that damage was sustained by temporary and permanent structures on the Al Khafji site.

341. In addition to the above, SGE requested a "fair settlement" to complete the project after the liberation of Kuwait, stating that "to undertake the same work now would require further time and will be subject to inflation."

342. SGE's request was examined by consultants employed by the Claimant. The consultants reduced the claim for losses that SGE alleged it incurred as a result of Iraq's invasion and occupation of Kuwait from SAR 14,213,503 to SAR 7,970,762 and reduced the claim for a fair settlement from SAR 147,958,814 to SAR 21,432,040. After considering SGE's request and the consultants' report, the Claimant terminated the contract with SGE by letter dated 1 January 1992. In the letter, the Claimant cited unexplained delays in the performance of the contract as the reason for terminating the contract with SGE.

343. The Claimant stated that it was prepared to award the amount of SAR 7,970,762 to SGE as "extraordinary expenses". The Claimant states however, that this amount, which was assessed by the Claimant's consultants to represent SGE's losses, has not been paid, as SGE disputed the quantum of the settlement.

344. The Claimant also states that in 1998, after a lengthy tender process, it entered into a new construction contract with a second contractor for an amount of SAR 374,593,605 to complete construction of the three hospitals. During the on-site inspection, the Claimant emphasised that its claim was limited to the claim for losses suffered by SGE, as revised by the Claimant's consultants, and that it was not claiming for its own losses resulting from continuing the project with a second contractor at an increased contract price.

345. In its response to the article 34 notification, the Claimant sought to increase the amount claimed in respect of the Group C Hospital project from SAR 7,970,762 to SAR 12,970,762.

(ii) Ar'ar Hospital project

346. Al Rashid Co. Ltd ("Al Rashid") was awarded the contract for construction of a 100 bed hospital in Ar'ar in 1984. Building approval was granted in February 1990 and foundations laid in May 1990. By 2 August 1990, 13 per cent of the contract had been completed. The project, which

had been delayed to redesign the building as described at paragraph 337 above, was due to be completed in November 1991. The work on the contract was delayed during the period of Iraq's invasion and occupation of Kuwait, although the site was not damaged by military operations.

347. In March 1992, Al Rashid made a claim against the Claimant for losses resulting from Iraq's invasion and occupation of Kuwait, comprising increased labour costs and increased costs of materials for the period during and immediately after Iraq's invasion and occupation of Kuwait. In addition, Al Rashid requested a "fair settlement" to complete the project after the liberation of Kuwait. Al Rashid's claim was reviewed and reduced from SAR 20,512,703 to SAR 4,867,156 by the Claimant's consultants, but this amount was rejected by Al Rashid. The contract was terminated by the Claimant in June 1993. The evidence shows that Al Rashid has continued to request the amount of SAR 20,512,703 that it had originally claimed against the Claimant. There is no evidence that the Claimant has paid the amount of SAR 4,867,156 to Al Rashid.

348. The Claimant states that due to an unsuccessful tender process, the project has not yet been resumed.

349. The Claimant in its response to the article 34 notification sought to increase the total claim amount in respect of the Ar'ar Hospital Project to SAR 9,867,000.

(b) Analysis and valuation

350. For the reasons stated at paragraph 170 above, the Panel finds that the claim amount is limited to SAR 7,970,762 in respect of the Group C Hospital Project and SAR 4,867,156 in respect of the Ar'ar Hospital Project.

351. The Panel finds that as the Claimant has made no payment to either SGE or Al Rashid in respect of their claims against it, the Claimant has not suffered a direct loss resulting from Iraq's invasion and occupation of Kuwait. 63/ Further, the evidence is insufficient to demonstrate that the Claimant has incurred any other increased costs or losses, with the exception of damage to the Al Khafji hospital site which is discussed below, in respect of the two construction projects as a result of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation for contract, with the exception of the claim for damage to the Al Khafji site.

352. With respect to the Al Khafji hospital site, the Panel finds that the Claimant as owner of the permanent structure which was damaged as a result of military operations in Al Khafji has suffered a loss which is, in principle, compensable for the reasons stated at paragraph 37 above. 64/ However, the evidence provided is insufficient to verify and value the full amount claimed for damage to the Al Khafji site.

353. With respect to damage to SGE's temporary structures at the Al Khafji site and equipment that was located therein, the Panel finds that for the reasons stated at paragraph 351 above the Claimant has suffered no loss and therefore recommends no award of compensation for this part of the amount claimed.

(c) Recommendation

354. In the light of the evidence, the Panel recommends an amount of SAR 45,457 for contract.

2. Public service expenditures (SAR 34,856,960)

355. The Claimant asserts that in response to Iraq's invasion and occupation of Kuwait, it organised and improved existing protective measures to enable its medical and administrative teams to provide medical care to the civilian population in the event of an Iraqi military attack or bomb explosions during the period of Iraq's invasion and occupation of Kuwait. The Claimant seeks compensation for the purchase of protective equipment, including gas masks and protective clothing; increased stocks of furniture and medical equipment and supplies; and increased overtime and bonus payments to staff.

(a) Gas masks and protective clothing

(i) Facts and contentions

356. The Claimant seeks compensation in the amount of SAR 10,456,000 for purchase costs of 10,000 gas masks, gas mask filters and 3,300 sets of protective clothing which were issued to its employees in the Eastern Province of Saudi Arabia.

(ii) Analysis and valuation

357. For the reasons stated at paragraph 130 above, the Panel finds that the purchase costs of the gas masks and protective clothing are, in principle, compensable. In the light of the evidence, the Panel recommends an award of SAR 10,456,000 for gas masks and protective clothing.

(b) Furniture, medical equipment and supplies

(i) Facts and contentions

358. The Claimant asserts that in order to provide comprehensive and professional health-care services to the civilian population, it had to increase its stocks of medical supplies and procure medicines, medical equipment and surgical supplies. Medical centres were outfitted in areas prone to attack, especially those areas vulnerable to the threat of bomb and missile attack.

359. The Claimant seeks SAR 13,276,349 for the costs of purchasing the increased stocks of medicines, medical equipment and surgical supplies in

15 regions throughout Saudi Arabia. This amount was reduced to SAR 11,816,149 in the Claimant's response to the article 34 notification to take into account the fact that one loss element had been asserted in a currency other than Saudi riyals. The Claim includes a claim by the General Directorate of the Eastern Region for damage to furniture and equipment at the health centre in Al Khafji resulting from military operations. The Claimant also seeks compensation for the loss of an ambulance in Riyadh District during the period of Iraq's invasion and occupation of Kuwait. No explanation of the circumstances giving rise to the loss of the ambulance was provided by the Claimant.

(ii) Analysis and valuation

360. The Panel finds that increasing stocks of medicines, medical equipment and surgical supplies in its hospitals and medical centres throughout Saudi Arabia was a reasonable and proportionate response to the threat of military action to which Saudi Arabia was exposed during the period of Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 46 above, the Panel finds that the incremental costs of implementing these measures are, in principle, compensable.

361. With respect to damage to furniture and equipment lost at the Al Khafji medical centre as a result of military operations, the Panel finds that for the reasons stated at paragraph 37 above, the claim is, in principle, compensable.

362. With respect to the claim for the loss of an ambulance, the Panel finds that no evidence has been provided to demonstrate that the loss of the ambulance was a direct loss resulting from Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation for loss of the ambulance.

363. In the light of the evidence and subject to adjustments for the residual value of purchased equipment and depreciation of damaged equipment made in accordance with paragraph 76 above, the Panel recommends an award of SAR 3,141,829 for increased stocks of medicines, medical equipment and surgical supplies, and damage to furniture and equipment in Al Khafji.

(c) Overtime and allowances (SAR 11,124,611)

(i) Facts and contentions

364. The Claimant asserts that as a result of Iraq's invasion and occupation of Kuwait, it was necessary to send specialised personnel to areas of particular need for training and supervising the mobilising of the Claimant's hospitals and support services. Medical teams were placed on 24-hour standby and emergency medical teams were placed on alert in remote locations to provide immediate medical support to the civilian population.

365. The Claimant asserts that in addition to the threat of military action, the influx of refugees resulted in the need for increased health

care services. The Claimant asserts that an increased amount of overtime was paid by the Claimant to its staff to cope with the emergency measures. Travel allowances were paid to staff who were seconded to areas directly threatened, while subsistence allowances were paid to emergency teams working overnight.

(ii) Analysis and valuation

366. For the reasons stated at paragraph 216 above, the Panel finds that the incremental costs of overtime and staff allowances that were incurred in implementing the Claimant's emergency procedures are, in principle, compensable.

367. The Panel further finds that for the reasons stated at paragraphs 52 to 54, incremental overtime and staff allowances incurred in providing health services to Kuwaiti refugees are, in principle, compensable.

368. In the light of the evidence, the Panel recommends an award of SAR 5,039,681 for overtime and allowances.

(d) Recommendation

369. Based on its findings, the Panel recommends an award of SAR 18,637,510 for public service expenditures.

3. Recommendation for Ministry of Health

370. Based on its findings regarding the Claim by the Ministry of Health, the Panel recommends compensation in the total amount of SAR 18,682,967.

Table 11. Recommended compensation for Ministry of Health

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Contract	12,837,918	12,837,918	45,457
Public service expenditures	34,856,960	33,396,760	18,637,510
Total	47,694,878	46,234,678	18,682,967

K. Ministry of Information (UNCC Claim No. 5000218)

371. The Claimant is responsible for television broadcasting throughout Saudi Arabia and information centres outside Saudi Arabia, including Kuwait City.

1. Other tangible property (SAR 152,327)

(a) Facts and contentions

372. The Claimant seeks compensation in the amount of SAR 65,000 for the loss of tangible property, including a car, office furniture and materials, from its information centre in Kuwait City. The Claimant asserts that the property disappeared during Iraq's invasion and occupation of Kuwait. The Claimant also seeks compensation for tangible property, comprised primarily of small pieces of equipment, from an "old" and a "new" television centre in Al Khafji, which was lost or damaged during the occupation of the town by Iraqi troops. The Claimant states that citizens were ordered to evacuate Al Khafji and that, while unattended, the television centres were looted. The amounts claimed are SAR 58,047 and SAR 29,280 respectively.

373. The "old" and "new" television stations in Al Khafji were mobile units located on the same property. Construction and outfitting of the "new" television centre had been completed on 18 February 1990.

(b) Analysis and valuation

374. For the reasons stated at paragraphs 37 and 107 above, the Panel finds that the claim for other tangible property loss and damage in Kuwait and Al Khafji is, in principle, compensable. Adjustments for depreciation to the amount claimed were made in accordance with paragraph 76 above.

(c) Recommendation

375. In the light of the evidence, the Panel recommends an award of SAR 31,565 for loss of other tangible property.

2. Payment or relief to others (SAR 120,000)

(a) Facts and contentions

376. The Claimant seeks compensation for amounts paid to the families of two Ministry of Information employees who were killed in two separate road accidents during the period of Iraq's invasion and occupation of Kuwait. The amounts claimed were paid in accordance with Civil Service laws.

377. The Claimant states that the accidents occurred on 4 January 1991 and 15 January 1991, respectively. One victim was accompanying a photographer compiling news material and the other was en route to the radio station at Hafr Al Baten.

(b) Analysis and valuation

378. The Panel finds that no evidence has been provided to indicate that either of the accidents resulted from "military operations or the threat of military action" for the purposes of paragraph 34(a) of decision 7. 65/ As the loss does not fall within any of the other sub-paragraphs of paragraph 34, decision 7, the Claimant must specifically show a direct loss resulting from Iraq's invasion and occupation of Kuwait in order for the claim to be, in principle, compensable. The Claimant has failed to do so. The Panel therefore recommends no award of compensation.

(c) Recommendation

379. Based on its findings, the Panel recommends no award of compensation for payment or relief to others.

3. Public service expenditures (SAR 5,283,842)

(a) Facts and contentions

380. The Claimant seeks compensation for an amount of SAR 5,283,842 paid to a contractor, Delta/Stesa, for incremental costs incurred in providing 24-hour television broadcasts during the period 16 January to 28 February 1991. The Claimant asserts that it authorised 24-hour television broadcasts during this period in order to provide the people of Saudi Arabia with information bulletins regarding the conflict and civil defence instructions, if necessary.

381. During the on-site inspection, the Claimant stated that the Ministry of Information broadcasts two channels, one in Arabic and the other in English and French. During the period 16 January to 28 February 1991, both channels broadcast on a 24-hour basis, showing news, religious and entertainment programmes. Warnings of air attacks were also broadcast on both channels.

382. The Claimant further asserted that Iraq had a powerful broadcasting system that enabled it to broadcast propaganda against Saudi Arabia and the Royal Family which could be viewed in Riyadh. Twenty-four hour broadcasting was therefore intended to counter Iraq's broadcasts.

383. At the time of Iraq's invasion and occupation of Kuwait, the Saudi Arabian television network was operated and maintained by Delta/Stesa. Pursuant to the contract for services between the Ministry of Information and Delta/Stesa, the company undertook to "service and maintain the television network in the Kingdom". The television network comprised the main transmission and production stations and studios of the first and second channels in various locations throughout Saudi Arabia, as well as mobile television centres and transmitters, mini studios, a central microwave connection, various transmission centres and television and broadcasting centres in Riyadh. The contract stipulated that the contractor was responsible for the maintenance and repair of all equipment

at all sites of the television network, as well as for operating all transmitters and broadcasting equipment during programme periods, as stipulated in the contract.

384. The contract did not stipulate the period during which Delta/Stesa was required to ensure continuity of transmission. However, correspondence between Delta/Stesa and the Claimant stated that normal transmission hours included 12 hours of transmission during 26 days in a 30 day month, and 15 hours of transmission on the remaining four days in a 30 day month.

385. Under the contract, Delta/Stesa was obliged to "respect all emergency transmission schedules which shall be communicated by the Ministry Representative." On 17 January 1991, soon after the commencement of military operations between the Allied Coalition Forces and Iraq, the Under Secretary of the Assistant Minister of Television Affairs approved a decision of 16 January 1991 to implement 24-hour broadcasting.

386. Delta/Stesa made a claim against the Claimant for the additional expenditure, including overtime costs paid to its staff, that it allegedly incurred as a result of the increased broadcasting hours. After a review of Delta/Stesa's claim by the Ministry of Finance, the Claimant paid on 22 February 1993 part of Delta/Stesa's claim.

387. The Claimant seeks compensation for the amount paid to Delta/Stesa in satisfaction of the latter's claim for increased broadcasting costs during the period 16 January to 28 February 1991.

(b) Analysis and valuation

388. The Panel finds that the extension of broadcasting hours during the period of Iraq's invasion and occupation of Kuwait in order to provide news and information of an emergency nature (such as warnings concerning air attacks and civil defence instructions) was a reasonable and proportionate response to military operations and the threat of military action to which Saudi Arabia was exposed.

389. The Panel therefore finds that the incremental and reasonable costs of distributing news of an emergency nature are, in principle, compensable, in accordance with paragraph 34(a) of Governing Council decision 7. 66/

390. It is clear from the contract that Delta/Stesa's services included all the operations necessary for television broadcasting. Therefore, the Panel finds that the participation of Delta/Stesa's employees was necessary in order to provide 24-hour broadcasts. However, the evidence does not clearly identify the fixed and variable costs of broadcasting that would have been incurred under the contract in normal circumstances, so as precisely to identify the incremental costs incurred by Delta in extending broadcasting hours.

391. Further, the Panel notes that the broadcasts were not devoted solely to news of an emergency nature, but included religious and entertainment

programmes. The Panel finds that the need for broadcasting these programmes did not arise as a direct result of Iraq's invasion and occupation of Kuwait. The Panel has reduced the amount claimed accordingly.

(c) Recommendation

392. In the light of the evidence, the Panel recommends an award of SAR 1,188,864 for public service expenditures.

4. Recommendation for Ministry of Information

393. Based on its findings regarding the Claim by the Ministry of Information, the Panel recommends compensation in the total amount of SAR 1,220,429.

Table 12. Recommended compensation for Ministry of Information

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Other Tangible Property	152,327	152,327	31,565
Payment or relief to others	120,000	120,000	nil
Public service expenditures	5,283,842	5,283,842	1,188,864
Total	5,556,169	5,556,169	1,220,429

L. Ministry of Higher Education (UNCC Claim No. 5000221)

394. The Claimant is a Saudi Arabian Government entity that oversees universities in Saudi Arabia. The Claim relates to four universities, King Faisal University, King Saud University, Al Immam Muhammad Ibn Saud Islamic University and King Abdul Aziz University, that allegedly suffered direct loss or damage as a result of Iraq's invasion and occupation of Kuwait.

1. Contract (SAR 430,553)

(a) Facts and contentions

395. The Claimant seeks compensation for increased staff travel costs incurred by King Abdul Aziz University in Jeddah as a result of the imposition of war risk insurance premiums on airline tickets purchased for expatriate employees.

396. The Claimant alleged that evidence of the war risk insurance payments could not be provided as all records were destroyed in a fire in October 1993.

(b) Analysis and valuation

397. The Panel finds that for the reasons stated at paragraph 61 above, incremental expatriate staff travel costs incurred as a result of the imposition of war risk insurance are, in principle, compensable.

398. However, the Panel recommends no award of compensation for the claim as the evidence is insufficient to verify and value the amount claimed.

(c) Recommendation

399. Based on its findings, the Panel recommends no award of compensation for contract.

2. Real property (SAR 22,209,122)

(a) Facts and contentions

400. The Claimant asserts that on the evening of 11 February 1991, an Iraqi Scud missile hit the campus of Al Immam Muhammad Ibn Saud Islamic University in Riyadh and exploded. Blast damage was suffered at a newly constructed sports complex next to the point of impact and at a nearby student residential complex. Other buildings in the vicinity of the blast, including a new athletics stadium, water tower and chlorination building, were also damaged.

401. The Claimant in support of its claim for real property damage provided videos and contemporaneous photographs of the area of impact and the damage to the nearby buildings.

402. In its response to the article 34 notification the Claimant reduced the amount claimed for the damage described above to SAR 21,107,712.

However, in documentation provided with its response to the article 34 notification and during the on-site inspection, the Claimant sought to include a claim for major structural repairs to the water tower, in the amount of SAR 804,899. The damage, comprising damage to concrete surrounding the entrance of the tower and cracked foundations, was discovered in November 1994 during routine inspections.

(b) Analysis and valuation

403. For the reasons stated at paragraph 37 above, the Panel finds that real property damage to the Claimant's buildings and facilities arising as a result of Scud missile attack is, in principle, compensable.

404. However, the Panel finds that with respect to the claim for structural repairs to the water tower, the Claimant is not allowed to introduce a new claim by means of its response to the article 34 notification and that the claimed amount is therefore limited to SAR 21,107,712. Furthermore, a report commissioned by the Claimant on the damage to the water tower does not demonstrate that this damage was caused by the Scud missile blast, but rather indicates that the damage arose as a result of circumstances unrelated to Iraq's invasion and occupation of Kuwait. The Panel finds that the damage is a not a direct loss resulting from Iraq's invasion and occupation of Kuwait and therefore recommends no award of compensation.

(c) Recommendation

405. In the light of the evidence, the Panel recommends an award of SAR 21,107,712 for real property.

3. Other tangible property (SAR 229,950)

(a) Facts and contentions

406. The Claimant asserts that King Faisal University ("KFU") in Dammam provided assistance and accommodation to Kuwaiti refugee families during Iraq's invasion and occupation of Kuwait. The Claimant asserts that single occupant student flats were each used to accommodate two Kuwaiti families. The Claimant asserts that the provision of accommodation to Kuwaiti families in single occupant flats caused "extreme and rapid wear and tear on furniture, textiles and fixtures."

407. The Claimant asserted that part of the university accommodation was locked when the refugees arrived during the university holidays. Locks were broken by the refugees as they attempted to enter the accommodation.

(b) Analysis and valuation

408. The Panel finds that other tangible property damage to the Claimant's student flats arising as a result of accommodating refugees is, in principle, compensable for the reasons stated at paragraph 49 above.

Adjustments for depreciation to the amount claimed have been made in accordance with paragraph 76 above.

(c) Recommendation

409. In the light of the evidence, the Panel recommends an award of SAR 57,238 for other tangible property.

4. Payment or relief to others - King Saud University (SAR 3,432,184)

(a) Facts and contentions

410. The Claimant seeks compensation for costs incurred by King Saud University ("KSU") (Al Qassim campus) in providing 550 Kuwaiti refugees with food, medical care and accommodation for part of the period of Iraq's invasion and occupation of Kuwait. Some of the refugees who received assistance were students at the University of Kuwait who were permitted to attend KSU to continue their studies.

411. The Claim also includes a claim for meals provided to University hospital staff who were required to perform overtime in caring for the refugees during the period of Iraq's invasion and occupation of Kuwait.

(b) Analysis and valuation

412. For the reasons stated at paragraph 49 above, the Panel finds that costs incurred in providing food, medical care and accommodation for Kuwaiti refugees or to those who assisted refugees are, in principle, compensable. The Panel also finds that incidental costs of meals for hospital staff who assisted the refugees are compensable in accordance with paragraphs 52 to 54 above. However, the evidence is insufficient to verify and value the full amount claimed.

(c) Recommendation

413. In the light of the evidence, the Panel recommends an award of SAR 1,111,594 for payment or relief to others.

5. Payment or relief to others - King Faisal University (SAR 360,000)

(a) Facts and contentions

414. The Claimant seeks compensation for overtime payments paid to KFU staff technicians who were required to assist in and supervise the accommodation of Kuwaiti refugees during the period 2 August 1990 to 2 March 1991.

415. The Claimant also seeks compensation for bonus payments made to KFU staff for emergency work performed in the university hospital during the period of Iraq's invasion and occupation of Kuwait. The bonus payments were made in accordance with a Royal Decree dated 16 March 1993 and were paid in October 1993.

(b) Analysis and valuation

416. The Panel finds that for the reasons stated at paragraphs 52 to 54, incremental overtime costs incurred in providing assistance to Kuwaiti refugees are, in principle, compensable, to the extent such costs were incurred during the period of Iraq's invasion and occupation of Kuwait.

417. However, the Panel finds that the bonus payments were authorized and paid to workers two years after the period of Iraq's invasion and occupation of Kuwait in relation to emergency work performed during the occupation period. The payments were not in the nature of incentive payments to staff to continue to work in the affected locations during the emergency period. Nor was any evidence provided to indicate that the Claimant was bound by a pre-existing promise or legal obligation to pay the staff bonuses. The Panel finds that the payments are not direct losses resulting from Iraq's invasion and occupation of Kuwait and therefore recommends no award of compensation for bonus payments. 67/

(c) Recommendation

418. In the light of the evidence, the Panel recommends an award of SAR 115,135 for payment or relief to others.

6. Public service expenditures (SAR 19,091,879)

419. The Claimant seeks compensation for costs incurred by KSU in Riyadh for purchasing medical supplies and equipment for its university hospitals; protective clothing, gas masks and emergency maintenance work at its Riyadh campus; and overtime wages paid to members of its emergency teams.

(a) Medical supplies and equipment

(i) Facts and contentions

420. The Claimant seeks compensation in the amount of SAR 609,601 for the costs of medical supplies and equipment purchased for its hospitals. The Claimant asserts that the hospitals provided emergency medical treatment for the civilian population, including refugees.

(ii) Analysis and valuation

421. The Panel finds that the purchase of medicines and medical supplies for the hospitals was a reasonable and proportionate response to the threat of military action to which Saudi Arabia was exposed during the period of Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 46 above, the Panel finds that the incremental costs of implementing these measures are, in principle, compensable.

422. In the light of the evidence, the Panel recommends an award of SAR 609,601.

(b) Maintenance and equipment

(i) Facts and contentions

423. The Claimant seeks compensation in the amount of SAR 2,045,752 for the purchase of protective clothing, gas masks and torches. The Claimant also asserts that it installed safety devices and emergency water pipelines during the period of Iraq's invasion and occupation of Kuwait and performed emergency maintenance work. These measures were intended to benefit the civilian population and refugees who were present on campus.

(ii) Analysis and valuation

424. For the reasons stated at paragraph 130 above, the Panel finds that the purchase costs of the protective clothing, gas masks and torches are, in principle, compensable. The Panel finds that the performance of emergency maintenance work and the installation of an emergency water pipe for the benefit of the civilian and refugee population are, in principle, compensable for the reasons stated at paragraphs 46 and 49 above. However, the Panel notes that some of the evidence relating to the purchase of equipment did not indicate the dates of purchase. The Panel therefore recommends no award of compensation for this portion of the claim.

425. In the light of the evidence, the Panel recommends an award of SAR 1,585,979 for maintenance and equipment.

(c) Overtime for emergency teams and miscellaneous expenditures

(i) Facts and contentions

426. The Claimant in its statement of claim sought compensation in the amount of SAR 16,436,526 for overtime payments made to members of emergency teams and various miscellaneous costs, as set out below:

(a) Overtime paid to security guards and university staff who assisted refugees at university hospitals, on campus or at other university premises;

(b) Purchase of emergency items, such as tents and refreshments for emergency centres;

(c) Increased contract price of SAR 11,106,452 with respect to an operations and maintenance contract; and

(d) Increased expatriate staff travel costs resulting from the imposition of war risk insurance on air travel.

427. With respect to the claim for an increased contract price, the Claimant awarded a new operations and maintenance contract on 27 November 1990. The contract was due to commence on 17 March 1991, but the contractor was required to have its staff on site on 17 January 1991 for a two-month "hand-over" period. However, as a result of problems encountered

by the contractor in recruiting staff, allegedly due to the commencement of military operations, the contractor was unable to commence performance of the contract. The Claimant rescinded the contract on 4 February 1991 and entered into a new contract on 17 June 1991 with a second contractor at an increased price. In a letter dated 3 April 1991 to the original contractor, the Claimant sought to recover the difference between the original and second contract prices. During the on-site inspection, the Claimant stated that on advice from its legal advisors, it had decided not to pursue the claim against the first contractor for the difference in the two contract prices. However, the Claimant seeks compensation from the Commission for the increased contract price.

428. In its revised statement of claim filed in January 1999, the Claimant sought to include a claim in the amount of SAR 25,204,354 for staff salaries. The Claimant alleged that it continued to pay the salaries even although the staff were unable to carry out their normal teaching duties as a result of the closure of KSU's campus.

(ii) Analysis and valuation

429. The Panel finds that the Claimant is not permitted to introduce a new claim after the Governing Council's deadline of 11 May 1998 for unsolicited supplements or amendments to previously filed claims. Accordingly, the Panel has not considered the claim for staff salaries, and the amount claimed for overtime and other costs is limited to SAR 16,436,526.

430. For the reasons stated at paragraph 49 above, incremental costs incurred in providing security guards for the benefit of the civilian and refugee population are, in principle, compensable. The Panel further finds that for the reasons stated at paragraphs 52 to 54 above, incremental overtime costs paid to KSU staff who assisted Kuwaiti refugees are, in principle, compensable.

431. The Panel finds that the purchase costs of items for the emergency centre are, in principle, compensable for the reasons stated at paragraphs 46 and 49 above.

432. However, with respect to the operations and maintenance contract, the Panel finds that the evidence is insufficient to demonstrate that the increased contract price is a direct loss resulting from Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation for the contract.

433. With respect to the claim for increased expatriate staff travel costs, the Panel finds that the Claimant has not provided evidence sufficient to verify and value the amount claimed. The Panel therefore recommends no award of compensation for the claim.

434. In the light of the evidence, the Panel recommends an award of SAR 795,911 for overtime and miscellaneous expenditures.

(d) Recommendation

435. Based on its findings, the Panel recommends an award of SAR 2,991,491 for public service expenditures.

7. Recommendation for Ministry of Higher Education

436. Based on its findings regarding the Claim by the Ministry of Higher Education, the Panel recommends compensation in the total amount of SAR 25,383,170.

Table 13. Recommended compensation for Ministry of Higher Education

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Contract	430,553	430,553	nil
Real property	22,209,122	21,107,712	21,107,712
Other tangible property	228,950	228,950	57,238
Payment or relief to others (KSU)	3,432,184	3,432,184	1,111,594
Payment or relief to others (KFU)	360,000	360,000	115,135
Public service expenditures	19,091,879	19,091,879	2,991,491
Total	45,752,688	44,651,278	25,383,170

M. Ministry of Higher Education - Cultural Attaché (UNCC Claim No. 5000222)

1. Other tangible property (KWD 5,386)

437. The Claimant seeks compensation for a car alleged to have been stolen from outside the residence of the Saudi Arabian Cultural Attaché in Kuwait City on the night of Iraq's invasion and occupation of Kuwait. The car, a 1986 Honda Accord, was the personal property of the Saudi Arabian Cultural Attaché at the Saudi Arabian Embassy in Kuwait.

438. A cross-category check between categories "C" and "F" revealed that a category "C" claim was filed by the owner of the car for the loss of a 1986 Honda Accord. Compensation in the amount claimed was awarded in the fifth instalment of category "C" claims.

439. Accordingly, the Panel recommends no award of compensation for the claim for the loss of the car.

440. The Panel therefore recommends no award of compensation for other tangible property.

2. Recommendation for Ministry of Higher Education - Cultural Attaché

441. Based on its findings regarding the Claim by the Ministry of Higher Education - Cultural Attaché, the Panel recommends no award of compensation.

Table 14. Recommended compensation for Ministry of Higher Education - Cultural Attaché

Loss type	Original claim amount (KWD)	Review amount (KWD)	Recommended compensation (SAR)
Other Tangible Property	5,386	5,386	nil
Total	5,386	5,386	nil

N. National Guard (UNCC Claim No. 5000223)

442. The Claimant is a division of the Saudi Arabian Ministry of Defence. The role of the Claimant in peacetime is to maintain order and general security for important installations, protect important persons, provide public health services, and maintain military academies. During hostilities its role is to support the Army in defending Saudi Arabia's borders.

443. During the on-site inspection, the Claimant stated that its role was similar to that of reserve troops who could be called upon in the event of an emergency. While the National Guard did not comprise formal military groups that trained every day, the Claimant stated that it did retain a number of formal units, including mechanized brigades, light infantry, medical services units, armoured and educational units. Some of these units actively participated in military operations against Iraq.

444. The Claimant asserts that in response to Iraq's invasion and occupation of Kuwait, Royal orders were issued to the Claimant's troops and civilian employees to maintain military readiness "on all its levels". During the period of Iraq's invasion and occupation of Kuwait, the Claimant was responsible for enhancing security measures with respect to important facilities, such as water facilities, electricity stations, communication centres and oil refineries. The Claimant was also charged with establishing security checkpoints throughout the main Saudi Arabian cities and on some main roads and highways and with establishing 24-hour mobile patrols in all Saudi Arabian cities.

445. The Panel notes that as there were considerable discrepancies between the losses asserted in the statement of claim and the supporting documentation, the losses as stated in the statement of claim formed the basis of the Panel's review and determination of the Claim.

446. In the statement of claim, the Claimant asserted a loss in the amount of USD 210,000,000 for costs allegedly incurred in providing food, water, medical care and accommodation for approximately 70,000 prisoners of war. However, in the response to the article 34 notification, the Claimant stated that:

> "The Saudi Ministry of Defence was the one who was responsible for providing the POWs with accommodation, food, and full care. As a result, the National Guard has not claimed any compensation for POWs."

447. In the light of the Claimant's withdrawal of the Claim for USD 210,000,000, the Panel will not consider this part of the Claim further.

1. Real property (SAR 96,304,000)

(a) Facts and contentions

448. The Claimant seeks compensation for the loss of barracks, command posts and offices of both the 24th Regiment and the Logistics Base for the Eastern Region, located in Al Khafji, which it alleges were completely destroyed as a result of the Iraqi occupation of Al Khafji on 29-30 January 1991.

449. The Claimant asserted that the complex was taken over by higher level National Guard personnel and converted into a communications, supply and logistics centre during the period of Iraq's invasion and occupation of Kuwait. The Claimant alleges that the complex was targeted by Iraqi forces and suffered such extensive damage during the occupation and battle of Al Khafji that complete demolition was required. All rubble was removed from the site at the end of Iraq's invasion and occupation of Kuwait in order to lessen the detrimental effect on civilian morale in Al Khafji. The Claimant seeks to recover the estimated cost of reconstructing the complex, as the facilities have not been reconstructed. The Claimant stated that currently there are no plans to rebuild the complex as it has adequate facilities in other parts of the Kingdom.

(b) Analysis and valuation

450. The Panel notes that the evidence provided in support of the claim includes an estimation of the reconstruction costs and a plan of a standard barracks facility. In response to requests made at the on-site inspection, the Claimant also provided details of building costs for Prince Abdullah Military City, a complex allegedly similar to the Al Khafji complex, as evidence to support the claimed amount. No documentation indicating the original costs of constructing the complex that is the subject of the claim was provided. Nor were photographs of the facility prior to Iraq's invasion and occupation of Kuwait or of the damage resulting from the military operations provided.

451. During the on-site inspection to Al Khafji, the verification team inspected the site where the Claimant alleges the barracks, command posts and logistics facility were located. The Claimant asserted that all debris was removed from the site after the liberation of Kuwait. However, the verification team did not detect any evidence of previous construction at this site.

452. The Panel finds that there is no evidence to establish the existence of the very subject matter of the claim. Therefore, the Panel finds it unnecessary to consider the applicability of Governing Council decision 19. Accordingly, the Panel recommends no award of compensation for the claim.

(c) Recommendation

453. Based on its findings, the Panel recommends no award of compensation for real property.

2. Payment or relief to others (SAR 7,117,721)

(a) Compensation for dead and wounded (SAR 3,474,000)

(i) Facts and contentions

454. The Claimant seeks reimbursement of the compensation it asserts it was obligated to pay to the families of fourteen persons killed and eight persons wounded as a result of the military operations in Al Khafji. The Claimant alleges that the casualties were sustained on 30 January 1991.

(ii) Analysis and valuation

455. Governing Council decision 11 states that:

> "The Governing Council decides that members of the Allied Coalition Armed Forces are not eligible for compensation for loss or injury arising as a consequence of their involvement in Coalition military operations against Iraq, except if the following three conditions are met:
>
> (a) the compensation is awarded in accordance with the general criteria already adopted; and
>
> (b) they were prisoners of war as a consequence of their involvement in Coalition military operations against Iraq in response to its unlawful invasion and occupation of Kuwait; and
>
> (c) the loss or injury resulted from mistreatment in violation of international humanitarian law (including the Geneva Conventions of 1949)."

456. The Panel finds that the compensation payments made to military personnel or their families do not satisfy the exceptions stated in Governing Council decision 11 and therefore recommends no award of compensation for this claim.

(b) Hospitality for new arrivals (SAR 3,643,721)

(i) Facts and contentions

457. The Claimant seeks compensation for "expenditure on hospitality for new arrivals", comprising food, accommodation and other necessities provided to refugees during the period from 2 August 1990 to 2 March 1991 pursuant to commands given by the Commander of the National Guard.

458. During the on-site inspection, the Claimant stated that the claim related to accommodation and hospitality provided to dignitaries, who were

not necessarily refugees. Accommodation was provided mainly in hotels for families or groups, representing both Kuwaiti and non-Kuwaiti organisations.

(ii) Analysis and valuation

459. The evidence provided included tables setting out the dates, locations and costs of accommodation and hospitality. The tables did not consistently state the number of people who were hosted. Despite requests in the article 34 notification and during the on-site inspection, the Claimant could neither confirm the total number nor provide a listing of the people who received hospitality.

460. In addition, some of the entries on the tables pre-date 2 August 1990, although all the payment orders provided in support of the claim are dated during the period of Iraq's invasion and occupation of Kuwait. No explanation for these discrepancies was provided.

461. The Panel finds that the evidence is insufficient to demonstrate that the costs of accommodating non-Saudi dignitaries were a direct loss resulting from Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation for the claim.

(c) Recommendation

462. Based on its findings, the Panel recommends no award of compensation for payment or relief to others.

3. Public service expenditures (SAR 101,914,571)

(a) Training and bonus payments for new recruits (SAR 3,424,806)

(i) Facts and contentions

463. The Claimant seeks compensation for the costs of training and paying "bonuses" and expenses to new recruits during the period from 2 August 1990 to 2 March 1991. A Royal Decree calling for the recruitment of 20,000 troops was issued on 22 October 1990. The Claimant states that in accordance with orders issued to the National Guard troops to be prepared for aggressive action, 5,678 persons of different ranks were recruited.

464. The Claimant stated that at the time of Iraq's invasion of Kuwait, approximately four to five million non-Saudi nationals were present in Saudi Arabia. The Claimant asserted that the risk of violence due to the presence of such a large number of foreign nationals necessitated the guarding of various installations and facilities throughout the country. The recruitment of troops was required to ensure internal security, particularly in urban centres.

465. The Claimant also stated that some assistance was provided to civilians in the event of a Scud missile attack, and that some National

Guard camps were set up to guard refugee camps. However, no evidence in support of these assertions was provided.

466. With respect to the claim for "bonuses" for new recruits, the Claimant stated that these comprised remuneration paid to new recruits who would not have been recruited but for Iraq's invasion and occupation of Kuwait. The amount claimed includes both the amounts paid to the recruits and the costs of training.

(ii) Analysis and valuation

467. The Panel finds that for the reasons stated at paragraph 40 above, costs incurred in recruiting and training new recruits to prepare for or participate in the military response to Iraq's invasion and occupation of Kuwait constitute costs of the Allied Coalition Forces within the meaning of Governing Council decision 19. The Panel therefore recommends no award of compensation for these costs.

468. Further, the Panel finds that where these costs were incurred for internal security purposes during the period of Iraq's invasion and occupation of Kuwait, such costs were not incurred as a direct result of Iraq's invasion and occupation of Kuwait for the reasons stated at paragraph 282 above. The Panel therefore recommends no award of compensation for these costs.

(b) Overtime for civilian officials (SAR 10,353,777)

(i) Facts and contentions

469. The Claimant asserts that in order to maintain its functions and to assist the civilian population, its civilian officials were required to perform overtime during the period of Iraq's invasion and occupation of Kuwait. The Claimant seeks to recover the costs of overtime and other staff expenses that it alleges it paid to civilian employees during the period from 2 August 1990 to 2 March 1991. The Claimant states that these payments were made in addition to their normal salaries.

470. The evidence provided indicates that the nature of the overtime work was administrative or support work for military units, including logistical support and supervision of arrivals. The Claimant states that the overtime duties performed by civilians were the same as those duties performed during regular work hours.

(ii) Analysis and valuation

471. The Panel finds that, for the reasons stated at paragraph 40 above, costs incurred in providing support to the Claimant's military units are not, in principle, compensable in accordance with Governing Council decision 19. The Panel therefore recommends no award of compensation for overtime and other staff expenses.

(c) Medical services and supplies (SAR 88,135,988)

(i) Facts and contentions

472. The Claimant seeks compensation for the costs of medical services and supplies that were incurred during the period from 2 August 1990 to 2 March 1991. In its statement of claim, the Claimant asserted that it incurred SAR 88,135,988 as part of measures taken "to organise and improve the existing medical services, mobilising medical teams available around the clock to counter all eventualities and to bring medical care to its members and to the civilian population in the event of an Iraqi military attack or bomb explosions". The Claimant asserts that in order to undertake these measures, it had to procure stocks of medicines, medical and surgical instruments and a wide range of supplies.

473. In its response to the article 34 notification, the Claimant elaborated upon the emergency measures undertaken by one National Guard hospital, King Fahd Hospital in Riyadh. The Claimant also alleged that emergency measures were carried out by other National Guard hospitals, clinics and emergency teams located throughout Saudi Arabia. However, no evidence was provided in support of these assertions. Consideration of the claim is therefore limited to measures undertaken by King Fahd Hospital.

474. The Claimant asserted that during peacetime, King Fahd Hospital provides medical services to both military personnel and civilians. During the relevant period, the hospital treated casualties of Scud missile attacks on Riyadh and other casualties from military operations outside Riyadh.

475. During the on-site inspection, the Claimant provided evidence in relation to payments made to Gama Services Limited ("Gama"), which was contracted during the relevant period to manage King Fahd Hospital in Riyadh. The evidence supports a total claim amount of SAR 51,632,122, comprising SAR 26,536,456 for consumed medical supplies; SAR 24,062,066 for increased staff costs; and SAR 1,033,600 for gas masks. The total amount claimed for medical services and supplies is reduced accordingly.

(ii) Analysis and valuation

a. Consumed medical supplies (SAR 26,536,456)

476. The Panel finds that, for the reasons stated at paragraph 46 above, incremental costs incurred by the Claimant in purchasing emergency medical supplies for the benefit of the civilian population are, in principle, compensable.

477. With respect to the claim for consumed medical supplies, the evidence provided comprised a computer-generated schedule summarising, on a monthly basis, consumed medical supplies for the period August 1990 to February 1991. The schedule totals SAR 26,536,456. However, it does not indicate the incremental costs of the consumables and medicines incurred as a result

of Iraq's invasion and occupation of Kuwait. No breakdown of the incremental costs incurred in respect of military and civilian personnel was provided, despite requests made during the on-site inspection.

478. The Panel finds that the evidence is insufficient to demonstrate the incremental costs of consumables and medicines purchased for the benefit of the civilian population as a result of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation.

b. Increased staff costs (SAR 24,062,066)

479. In respect of the claim for increased staff costs, the Claimant stated that the following expenditures were incurred:

a. evacuation of dependants;

b. chartering a flight from Manila;

c. increased health and travel insurance for staff;

d. staff bonuses;

e. overtime;

f. locum costs;

g. penalty payments; and

h. food provided to military personnel and police.

Each of the losses asserted will be addressed in turn.

480. The Claimant seeks compensation in the amount of SAR 1,098,446 for evacuation of staff dependants, which the Claimant asserts was undertaken on the advice of "different Embassies". The Panel finds that the costs of evacuating staff dependants from Riyadh during the period of Iraq's invasion and occupation of Kuwait are, in principle, compensable in accordance with paragraph 34(a) of Governing Council decision 7, to the extent that the costs are supported by the evidence. 68/

481. The Claimant seeks compensation in the amount of SAR 602,066 for chartering a flight from Manila to fly in 171 medical personnel to replace existing staff who left the hospital as a result of the threat of military action to which Saudi Arabia was exposed during the period of Iraq's invasion and occupation of Kuwait. However, no evidence was provided in support of the assertion that staff left the hospital during that period as a result of Iraq's invasion and occupation of Kuwait, and that recruitment of replacement staff was therefore required. Accordingly, the Panel finds that the evidence provided in support of the claim is insufficient to demonstrate that the charter costs are a direct loss resulting from Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation for this claim.

482. The Claimant seeks compensation in the amount of SAR 83,543 for the increased costs of health insurance resulting from the imposition of war risk insurance for staff. The costs were incurred during the period from January to March 1991. The Claimant also seeks compensation in the amount of SAR 429,759 for the increased costs of travel insurance, alleged to have been incurred as a result of war risk insurance that was imposed on staff travel. The costs were paid on an individual employee basis for each month from September 1990 to February 1991.

483. The Panel finds that for the reasons stated at paragraph 61 above, incremental insurance costs resulting from the imposition of war risk insurance are, in principle, compensable to the extent that these costs are supported by the evidence. The Panel finds, however, that the incremental health insurance costs incurred in March 1991 should be deducted from the amount claimed as these were incurred after the relevant period.

484. The Claimant seeks compensation in the amount of SAR 14,414,034 for bonuses paid to employees. The Claimant asserts that the bonuses were paid to encourage foreign medical personnel to work at King Fahd Hospital during the period of Iraq's invasion and occupation of Kuwait. In support of its claim, the Claimant provided the final page of a 166 page computer printout purporting to list the bonus payments. The printout includes details of each employee's name, nationality, description of the payment, amount paid and number of hours worked. The evidence also includes a schedule purporting to show the total amount claimed for "war related employee bonus for the period covering from November 1990 through February 1991".

485. The Panel finds that in accordance with paragraph 58 above, bonus payments that were paid as a direct result of Iraq's invasion and occupation of Kuwait are, in principle, compensable. Such payments would include incentive payments made to staff to work in Riyadh during the period of Iraq's invasion and occupation of Kuwait, to the extent that they were paid to enable the Claimant to continue its operations.

486. However, no evidence was provided in support of the assertion that payment of the bonuses was necessary to induce staff to work at King Fahd hospital in Riyadh during the relevant period. Nor has sufficient evidence been provided to verify and value the amount claimed. The Panel finds that the evidence is insufficient to demonstrate that the bonuses constitute direct costs resulting from Iraq's invasion and occupation of Kuwait and therefore recommends no award of compensation.

487. The Claimant seeks compensation in the amount of SAR 1,279,693 for overtime that it alleges Gama's employees were required to perform in providing emergency medical services during the period of Iraq's invasion and occupation of Kuwait.

488. The Panel finds that, for the reasons stated at paragraphs 56 to 57 above, incremental costs of overtime incurred in providing emergency medical services for the benefit of the civilian population are, in

principle, compensable. Compensation is not recommended for any overtime performed in assisting military personnel.

489. The Claimant seeks compensation in the amount of SAR 797,651 for locum costs and SAR 4,155,000 for "man-month penalties". The evidence provided in support of the claim for locum costs included a list of locum costs incurred during the period from September 1990 to the end of February 1991. No evidence of the locum costs normally incurred by Gama was provided. No explanation or evidence was provided in support of the claim for "man-month penalties".

490. The Panel finds that the Claimant has not provided evidence sufficient to demonstrate that incremental locum costs were incurred during the relevant period, and that such costs constitute a direct loss resulting from Iraq's invasion and occupation of Kuwait. The Panel further finds that the Claimant has not provided evidence sufficient to demonstrate and verify the circumstances and amount of the claim for "man-month penalties". The Panel therefore recommends no award of compensation for locum costs and "man-month penalties".

491. Finally, the Claimant seeks compensation in the amount of SAR 479,538 for food provided to United States military personnel, and SAR 722,336 for food provided to the Claimant's military police.

492. The Panel finds that the provision of food to military personnel and police constitutes support provided in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 40 above, the Panel recommends no award of compensation for the costs of providing the food.

493. In the light of the evidence, the Panel recommends an award of SAR 1,136,332 for increased staff costs.

c. Gas masks (SAR 1,033,600)

494. The Claimant asserts that 10,366 gas masks were purchased for employees of King Fahd Hospital and their dependants during the period of Iraq's invasion and occupation of Kuwait.

495. In accordance with the findings referred to at paragraph 130 above, the Panel finds that the costs of purchasing the gas masks are, in principle, compensable.

496. In the light of the evidence, the Panel recommends an award of SAR 1,033,600 for gas masks.

(d) Recommendation

497. Based on its findings, the Panel recommends an award of SAR 2,169,932 for public service expenditures.

4. Recommendation for National Guard

498. Based on its findings regarding the Claim by the National Guard, the Panel recommends compensation in the total amount of SAR 2,169,932.

Table 15. Recommended compensation for National Guard

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Real property	96,304,000	96,304,000	nil
Payment or relief to others	7,117,721	7,117,721	nil
Public service expenditures	101,914,571	65,410,705	2,169,932
Total	205,336,292	168,832,426	2,169,932

O. Water and Sewerage Authority (UNCC Claim No. 5000225)

499. The Claimant operates, maintains, manages and supervises water and sewerage projects in the Eastern Province of Saudi Arabia under the authority of the Ministry of Municipal and Rural Affairs. It is funded under the general budget of the Government of Saudi Arabia and earns revenue from consumers of water and sewerage services.

500. The Claimant sought compensation in the total amount of SAR 40,009,268 in the statement of claim. However, one claim element, for water and drainage equipment and staff who assisted the Meteorology and Environmental Protection Administration, relates to environmental damage. This loss element has been severed and assigned to the "F4" Panel appointed to review environmental claims. The remaining components of the Claim total SAR 38,615,546.

1. Real property (SAR 30,000)

(a) Facts and contentions

501. The Claimant asserts that its main offices, a pump house and staff accommodation in Al Khafji were damaged as a result of shelling and rocket attacks that occurred in Al Khafji from 29 to 31 January 1991. The Claimant's maintenance contractors carried out maintenance and repair works in respect of the damaged buildings in Al Khafji after the liberation of Kuwait.

(b) Analysis and valuation

502. The Panel finds that for the reasons stated at paragraph 37 above, the real property damage to the Claimant's buildings is, in principle, compensable. However, the evidence is insufficient to verify and value the full amount claimed.

(c) Recommendation

503. In the light of the evidence, the Panel recommends an award of SAR 4,500 for real property.

2. Other tangible property (SAR 42,950)

(a) Facts and contentions

504. The Claimant asserts that laboratory equipment was lost or damaged as a result of military operations in Al Khafji.

(b) Analysis and valuation

505. The Panel finds that the loss or damage of laboratory equipment is, in principle, compensable for the reasons stated at paragraph 37 above. Adjustments for depreciation to the amount claimed have been made in accordance with paragraph 76 above.

(c) Recommendation

506. In the light of the evidence, the Panel recommends an award of SAR 3,938 for other tangible property.

3. Public service expenditures (SAR 38,542,596)

507. The Claimant seeks compensation for a number of measures it asserts were carried out to provide water to refugees and the displaced local population. The Claimant asserts that the refugees and civilians did not have access to the public water supply or could no longer obtain water due to damage to the Claimant's property. During the on-site inspection, the Claimant stated that during the period 2 August 1990 to 2 March 1991 it provided water and sewerage services, including water tanks and portable toilets, to two refugee camps and four schools in which refugees were accommodated in Al Khafji. Water and sewerage services were also provided to some refugees in a camp in Dammam.

508. During the on-site inspection, the Claimant explained that two water sources were available in the region - ground water and desalination plants - and that one source could be substituted for the other in event of emergency, such as pollution of the Persian Gulf waters. The Claimant seeks compensation for the cost of emergency work undertaken to ensure an uninterrupted water supply in the event of damage or disruption to desalination plants and power supplies. These measures were carried out in accordance with the Claimant's emergency plans that were devised and implemented in the Eastern Province.

(a) Wages and operational costs for water tankers (SAR 129,910)

(i) Facts and contentions

509. The Claimant seeks compensation in the amount of SAR 119,910 for wages paid to drivers and SAR 10,000 for fuel for water tankers that were used to transport water to refugee camps in the Eastern Province during the period from 3 August 1990 to 18 January 1991. The Claimant states that the drivers had not previously been in the Claimant's employ.

(ii) Analysis and valuation

510. The Panel finds that costs incurred in providing water for refugees and civilians are, in principle, compensable for the reasons stated at paragraphs 52 to 54 above.

511. However, the evidence provided included a sample of payroll records dated August to November 1988 but no payroll records relating to overtime performed during the period of Iraq's invasion and occupation of Kuwait. No evidence was provided in support of the asserted fuel costs. The Panel therefore finds that the evidence is insufficient to verify and value the claim and recommends no award of compensation.

(b) Purchase of 100 water tankers (SAR 12,578,390)

(i) Facts and contentions

512. The Claimant states that 100 water tankers were purchased to transport and provide water supplies to refugees and "to deal with the emergency circumstances" during the period of Iraq's invasion and occupation of Kuwait.

513. The Claimant stated that the tankers were severely damaged during the period of Iraq's invasion and occupation of Kuwait due to harmful weather conditions, the condition of the roads and the intense usage to which the tankers were put. The Claimant asserted that the tankers therefore had no useful life after the relevant period. It was further asserted that five of the tankers were lost or destroyed during the relevant period as a result of military operations.

(ii) Analysis and valuation

514. The Panel finds that costs of purchasing water tankers to provide water for refugees and civilians are, in principle, compensable for the reasons stated in paragraph 49 above. Adjustments for residual value to the amount claimed were made in accordance with paragraph 76 above.

515. The Panel also finds that the claim for loss or destruction of five tankers as a result of military operations is, in principle, compensable for the reasons stated at paragraph 37 above.

516. In the light of the evidence, the Panel recommends an award of SAR 858,088 for purchase of water tankers.

(c) Drilling of 19 wells (SAR 4,187,750)

(i) Facts and contentions

517. The Claimant asserts that 19 water wells were drilled during the period of Iraq's invasion and occupation of Kuwait at locations where refugees were accommodated due to lack of water supplies in those areas.

(ii) Analysis and valuation

518. The Panel finds that costs of drilling wells to provide water for refugees and civilians during the relevant period are, in principle, compensable for the reasons stated at paragraph 49 above. Adjustments for residual value to the amount claimed were made in accordance with paragraph 76 above.

519. In the light of the evidence, the Panel recommends an award of SAR 1,357,688 for drilling wells.

(d) Purchase of 110 water pumps (SAR 3,603,750)

(i) Facts and contentions

520. The Claimant seeks compensation for the costs of purchasing 110 water pumps for pre-existing wells as well as for the 19 wells drilled for the refugee camps. The water pumps, which were purchased between December 1990 and February 1991, were to be used to operate the wells in the event of breakdown of the desalination plants. The Claimant asserts that the pumps were severely damaged during the period of Iraq's invasion and occupation of Kuwait due to harmful weather conditions and intense usage.

(ii) Analysis and valuation

521. The Panel finds that the costs of purchasing the pumps are, in principle, compensable for the reasons stated at paragraphs 46 and 49 above. Adjustments for residual value to the amount claimed were made in accordance with paragraph 76 above.

522. In the light of the evidence, the Panel recommends an award of SAR 234,244 for pumps.

(e) Purchase of 93 generators (SAR 15,767,444)

(i) Facts and contentions

523. The Claimant asserts that generators were purchased to operate the water pumps attached to the pre-existing and purpose-built water wells in case of disruption to the main power supply. The Claimant further asserts that the generators, which were purchased during the period of Iraq's invasion and occupation of Kuwait, were severely damaged during this period due to harmful weather conditions and intense usage. The Claimant seeks compensation for the purchase costs of the generators.

524 During the on-site inspection, the Claimant confirmed that the amount claimed included a duplicate amount. The claim amount is therefore reduced to SAR 15,304,371.

(ii) Analysis and valuation

525. The Panel finds that the costs of purchasing the generators are, in principle, compensable for the reasons stated at paragraphs 46 and 49 above. Adjustments for residual value to the amount claimed were made in accordance with paragraph 76 above.

526. In the light of the evidence, the Panel recommends an award of SAR 994,784 for generators.

(f) Purchase of portable toilets and reservoirs (SAR 629,750)

(i) Facts and contentions

527. The Claimant seeks compensation for the purchase costs of 70 portable toilets and 237 reservoirs for portable toilets. The Claimant asserts that the reservoirs and portable toilets were delivered to Civil Defence for "use in the inflicted areas and at Civil Defence request".

(ii) Analysis and valuation

528. The Panel finds that for the reasons stated at paragraph 49 above the costs of the portable toilets and reservoirs are, in principle, compensable. Adjustments for residual value to the amount claimed were made in accordance with paragraph 76 above.

529. In the light of the evidence, the Panel recommends an amount of SAR 40,914 for portable toilets and reservoirs.

(g) Purchase of telecommunications equipment (SAR 751,040)

(i) Facts and contentions

530. The Claimant seeks compensation for wireless communications equipment that it asserts was purchased to provide communication in areas outside the telephone network and to be used in the event of disruption to the public telecommunications network.

(ii) Analysis and valuation

531. The Panel finds that costs of purchasing mobile telecommunications equipment are, in principle, compensable for the reasons stated at paragraphs 46 above. Adjustments for residual value to the amount claimed were made in accordance with paragraph 76 above.

532. In the light of the evidence, the Panel recommends an award of SAR 24,409 for telecommunications equipment.

(h) Overtime (SAR 894,562)

(i) Facts and contentions

533. The Claimant states that during the period 2 August 1990 to 2 August 1991, staff members were assigned to specific emergency tasks or functions, ad hoc committees made up of the claimant's officials and other technical experts were established and staff were placed on shifts in order to maintain operations on a 24-hour basis as part of the Claimant's emergency plan. The Claimant asserted that approximately 200 employees performed overtime during this period.

(ii) Analysis and valuation

534. The Panel finds that for the reasons stated at paragraphs 56 to 57 above, incremental overtime costs that were incurred by the Claimant in implementating its emergency plan are, in principle, compensable to the extent that such costs were incurred during the period 2 August 1990 to 2 March 1991.

535. The Claimant provided copies of payment orders for overtime work, none of which were dated during the relevant period. The payment orders related to decisions approving overtime that were also not dated during that period. No payroll records were provided in support of this claim.

536. The Panel finds that the evidence is insufficient to verify and value the claim for overtime performed during the period of Iraq's invasion and occupation of Kuwait and therefore recommends no award of compensation.

(i) Recommendation

537. Based on its findings, the Panel recommends an award of SAR 3,510,127 for public service expenditures.

4. Recommendation for Water and Sewerage Authority

538. Based on its findings regarding the Claim by the Water and Sewerage Authority, the Panel recommends compensation in the total amount of SAR 3,518,565.

Table 16. Recommended compensation for Water and Sewerage Authority

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Real property	30,000	30,000	8,500
Other tangible property	42,950	42,950	3,938
Public service expenditures	38,542,596	38,079,523	3,510,127
Total	38,615,546	38,152,473	3,518,565

P. Municipality of Al Khafji (UNCC Claim No. 5000226)

539. The Claimant is a Saudi Arabian Government entity that is supervised by the Ministry of Municipal and Rural Affairs.

1. Real property (SAR 13,063,293)

540. The Claimant alleges that military operations and the passage of military vehicles in Al Khafji caused damage to municipal buildings, road surfaces, pavements, lighting and public parks. The Claimant seeks compensation for the cost of repairs to the damaged roads and buildings.

541. During the on-site inspection, the Claimant provided contemporaneous video footage of the damage caused to the town of Al Khafji as a result of military operations.

(a) Damage to roads (SAR 11,672,100)

(i) Facts and contentions

542. The Claimant seeks compensation in the amount of SAR 11,672,100 for the costs of repairing the Municipality's roads. The Claimant asserts that the damage to the roads occurred as a result of heavy traffic, artillery damage and flooding due to high water tables. The Claimant asserts that the flooding occurred as it was prevented from carrying out its usual practice of pumping out ponded rainwater to vacant land during the period of the military operations.

543. After the on-site inspection, the Claimant sought to increase the amount claimed for damage to roads to SAR 12,433,663.

(ii) Analysis and valuation

544. For the reasons stated at paragraph 429 above, the Panel finds that the Claimant is not permitted to increase the amount claimed and that the claim amount for damage to roads is therefore limited to SAR 11,672,100.

545. The Panel finds that the damage to roads occurred as a result of military operations by either side in Al Khafji and is therefore, in principle, compensable for the reasons stated at paragraph 37 above. Adjustments for depreciation to the amount claimed were made in accordance with paragraph 76 above.

546. In the light of the evidence, the Panel recommends an award of SAR 1,890,760 for damage to roads.

(b) Damage to buildings (SAR 400,000) and lighting (SAR 372,000)

(i) Facts and contentions

547. The Claimant asserts that as a result of the military operations in

Claimant also asserts that some damage was due to extensive use of the buildings by refugees.

(ii) Analysis and valuation

548. The Panel finds that real property damage to civilian buildings and lighting in Al Khafji arising as a result of military operations by either side is, in principle, compensable for the reasons stated at paragraph 37 above. The Panel also finds that real property damage to municipal buildings arising as a result of accommodating refugees is, in principle, compensable for the reasons stated at paragraph 49 above. However, the Panel finds that the evidence is insufficient to verify and value the full amount claimed for damage to buildings. Adjustments for depreciation to the amount claimed for lighting have been made in accordance with paragraph 76 above.

549. In the light of the evidence, the Panel recommends an award of SAR 201,538 for damage to buildings and SAR 63,500 for damage to lighting.

(c) Damage to municipal greenland (SAR 500,000)

(i) Facts and contentions

550. The Claimant asserts that as a result of military operations in Al Khafji, it could not water trees and plants in the Municipality during the relevant period. As a result, increased ground salinity destroyed some of the Municipality's greenland. During the on-site inspection, the Claimant also alleged that some damage to vegetation occurred as the result of oily rain that fell after the Kuwaiti oil fields were set alight although no evidence was provided in support of this assertion. The Claimant seeks compensation for the loss of palm trees, shrubbery and grass.

(ii) Analysis and valuation

551. The Panel finds that military operations that took place in Al Khafji prevented the Claimant from watering the Municipality greenland, which in turn led to the loss of palm trees, shrubbery and grass. The Panel finds that such losses are, in principle, compensable for the reasons stated at paragraph 37 above. However, the evidence is insufficient to verify and value the full amount claimed. In the light of the evidence, the Panel recommends an award of SAR 75,000 for greenland.

(d) Damage to municipal garage (SAR 119,193)

(i) Facts and contentions

552. The Claimant asserts that the door and locks of the garage were broken and tangible property located in the garage damaged during military operations in Al Khafji. In particular, the Claimant asserts that a shovel and a crane were damaged as a result of use by the Allied Coalition Forces.

However, no evidence in support of these assertions or of the damage alleged to have occurred was provided by the Claimant.

(ii) Analysis and valuation

553. The Panel finds that the Claimant has not provided evidence sufficient to demonstrate the circumstances and amount of the claimed loss and therefore recommends that no compensation be awarded for damage to the municipal garage.

(e) Recommendation

554. Based on its findings, the Panel recommends an award of SAR 2,130,798 for real property.

2. Other tangible property (SAR 354,307)

(a) Facts and contentions

555. The Claimant seeks compensation in respect of garage equipment, including an air compressor, battery accumulator, crane and a shovel, 69/ which it alleges was lost or destroyed during the occupation and battle of Al Khafji.

(b) Analysis and valuation

556. The Panel finds that other tangible property damage arising as a result of military operations in Al Khafji is, in principle, compensable for the reasons stated at paragraph 37 above. Adjustments for depreciation to the amount claimed were made in accordance with paragraph 76 above.

(c) Recommendation

557. In the light of the evidence, the Panel recommends an award of SAR 2,013 for other tangible property.

3. Public service expenditures (SAR 450,000)

(a) Facts and contentions

558. The Claimant seeks compensation in the amount of SAR 180,000 for overtime and SAR 270,000 for additional fuel costs it alleges were incurred in implementing emergency procedures during the period of Iraq's invasion and occupation of Kuwait.

559. The Claimant asserts that the emergency measures were implemented in accordance with directives issued by the Minister of the Interior and Head of the Civil Defence Authority on 1 September 1990 and that the implementation of the emergency measures required the Claimant's staff to work under a state of emergency on a 24-hour basis. The staff were charged with, inter alia, assisting refugees; setting up and training teams in evacuation, first aid and driving service and emergency vehicles; constructing, filling and distributing water tanks as a precaution against

possible attack on the saline water conversion plant; and ensuring an uninterrupted supply of commodities.

560. The Claimant also asserts that its staff, including engineers and surveyors, were required to assist in the removal of damaged buildings and clearing of debris; identify water reserves; and support civil defence units. The Claimant asserts that these activities resulted in increased fuel consumption.

(b) Analysis and valuation

561. In accordance with the reasons set out at paragraph 46 above, the Panel finds that the Claimant's emergency procedures were a reasonable and proportionate response to the threat of military action to which the Eastern Province of Saudi Arabia was exposed during the period of Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraphs 56 to 57 above, the Panel therefore finds that the incremental costs of overtime incurred in carrying out the emergency procedures are, in principle, compensable.

562. However, the Panel notes that the evidence provided in support of the claim included overtime records dated in 1993 and payment orders that do not correspond to the amount claimed. The Panel finds that the evidence is insufficient to verify and value the claim for overtime costs and therefore recommends no award of compensation.

563. With respect to the claim for increased fuel consumption, the Claimant has provided payment orders that are dated after the period of Iraq's invasion and occupation of Kuwait. The Panel finds that the evidence is insufficient to verify and value the claim for increased fuel costs and therefore recommends no award of compensation.

(c) Recommendation

564. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

4. Recommendation for Municipality of Al Khafji

565. Based on its findings regarding the Claim by the Municipality of Al Khafji, the Panel recommends compensation in the total amount of SAR 2,131,811.

Table 17. Recommended compensation for Municipality of Al Khafji

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Real property	13,063,293	13,063,293	2,130,798
Other tangible property	354,307	354,307	1,013
Public service expenditures	450,000	450,000	nil
Total	13,867,600	13,867,600	2,131,811

Q. Charity Society (UNCC Claim No. 5000227)

566. The Charity Society is a charitable organization based in Al Khafji that operates under the supervision of the Ministry of Labour and Social Affairs. The Society, which is funded by donations and receives annual financial assistance from that Ministry, determines its annual budgets in accordance with the instructions of that Ministry.

1. Payment or relief to others (SAR 389,287)

(a) Facts and contentions

567. The Claimant seeks compensation for costs incurred in providing refugees with food, water, accommodation, medical aid and other services between 2 August 1990 and 2 March 1991. In its response to the article 34 notification, the Claimant stated that approximately 350,000 refugees from Kuwait entered Saudi Arabia through Al Khafji. However, no record of the number or identities of the refugees who received assistance from the Claimant was maintained.

568. During the on-site inspection, the Claimant provided evidence, including a number of letters dated during the period of Iraq's invasion and occupation of Kuwait from the Emir of Al Khafji to the Secretary General of the Charity Society, requesting that cash assistance be given to Kuwaiti refugees out of a fund entitled "committee for assistance to displaced Kuwaitis". The evidence indicates that this fund was established by the Al Khafji Emirate and received donations from various entities for the provision of relief to Kuwaiti refugees. The evidence also includes payment orders in respect of payments made to refugees.

(b) Analysis and valuation

569. The Panel finds that for the reasons stated at paragraph 49 above, the claim for assistance provided by the Charity Society to refugees entering Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait is, in principle, compensable.

570. An examination of the evidence indicates that the Charity Society received donations for the fund to provide assistance to Kuwaiti refugees and that payments were made out of this fund. The evidence also indicates that the Charity Society transferred funds within its own budget to provide assistance to refugees, and therefore had to postpone construction of a new building. However, the evidence was not sufficient to verify and value the full amount claimed.

(c) Recommendation

571. In the light of the evidence, the Panel recommends an award of SAR 143,476 for payment or relief to others.

2. Recommendation for Charity Society

572. Based on its findings regarding the Claim by the Charity Society, the Panel recommends compensation in the total amount of SAR 143,476.

Table 18. Recommended compensation for Charity Society

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Payment or relief to others	389,287	389,287	143,476
Total	389,287	389,287	143,476

R. Saudi Arabian Red Crescent Society (UNCC Claim No. 5000228)

573. The Saudi Arabian Red Crescent Society in Al Khafji is a charitable society that was established by Royal Decree, and is a permanent member of the International Federation of the Red Crescent and Red Cross. It is funded by means of contributions, grants and aid from a number of sources, including the Government of Saudi Arabia.

1. Real Property (SAR 80,000)

(a) Facts and contentions

574. The Claimant seeks compensation for damage to two prefabricated buildings, comprising offices, a training hall, storage room, an infirmary and a prayer room. The Claimant alleges that the buildings were damaged by Iraqi forces during the battle of Al Khafji and could no longer be used after the withdrawal of Iraqi forces from the town. The Claimant alleges that it had to use a student house as a temporary centre until new premises could be constructed.

(b) Analysis and valuation

575. For the reasons stated at paragraph 37 above, the Panel finds that real property damage to the Claimant's buildings arising as a result of military operations in Al Khafji is, in principle, compensable. Adjustments for depreciation to the amount claimed were made in accordance with paragraph 76 above.

(c) Recommendation

576. In the light of the evidence, the Panel recommends an award of SAR 46,500 for real property.

2. Other tangible property (SAR 35,000)

(a) Facts and contentions

577. The Claimant seeks compensation in the amount of SAR 15,000 for the loss of medical equipment, including oxygen cylinders and first aid kits, and SAR 20,000 for the loss of office furniture, blankets and carpets.

(b) Analysis and valuation

578. For the reasons stated at paragraph 37 above, the Panel finds that other tangible property damage at the Claimant's buildings arising as a result of military operations in Al Khafji is, in principle, compensable. Adjustments for depreciation to the amount claimed were made in accordance with paragraph 76 above.

(c) Recommendation

579. In the light of the evidence, the Panel recommends an award of SAR 5,250 for other tangible property.

3. Recommendation for Red Crescent Society

580. Based on its findings regarding the Claim by the Red Crescent Society, the Panel recommends compensation in the total amount of SAR 51,750.

Table 19. Recommended compensation for Red Crescent Society

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Real property	80,000	80,000	46,500
Other tangible property	35,000	35,000	5,250
Total	115,000	115,000	51,750

S. Department of Education for Girls (UNCC Claim No. 5000229)

581. The Claimant is a Saudi Arabian Government entity based in Al Khafji. It is responsible for operating and supervising schools for girls in the Eastern Province.

582. In its revised statement of claim filed in February 1999, the Claimant sought to increase the total amount claimed from SAR 9,650,000 to SAR 9,678,830. For the reasons stated at paragraph 429 above, the Panel finds that the Claimant is not permitted to increase the amount claimed. The total amount claimed is therefore limited to SAR 9,650,000.

1. Real property (SAR 9,360,486)

(a) Facts and contentions

583. The Claimant seeks compensation for the estimated value of the loss of three school buildings that it alleges became unusable as a result of damage inflicted during the battle of Al Khafji or as a result of accommodating Kuwaiti refugees. The Claimant states that one school was demolished in 1998 while two schools, which were evacuated in 1992 and 1994 respectively, were scheduled for demolition.

584. The Claimant also seeks compensation for the estimated costs of repairing a fourth school. The Claimant asserts that the building was damaged as a result of military operations but is still in use.

(b) Analysis and valuation

585. The Panel finds that real property damage to the schools arising as a result of military operations is, in principle, compensable for the reasons stated at paragraph 37 above. The Panel also finds that real property damage arising as a result of accommodating refugees in the schools is, in principle, compensable for the reasons stated at paragraph 49 above.

586. However, despite requests made in the article 34 notification and during the on-site inspection, neither a schedule of damage to the properties nor any quantified estimates for repair and reconstruction were provided by the Claimant.

587. Furthermore, inspection of the two schools scheduled for demolition suggested that the damage asserted was unrelated to Iraq's invasion and occupation of Kuwait. This conclusion is supported by the fact that the schools remained in use for varying periods after Iraq's invasion and occupation of Kuwait.

588. The Panel therefore concludes that the evidence is insufficient to verify and value the claim for real property damage to one school, and insufficient evidence to demonstrate that the damage to the remaining two schools was suffered as a result of Iraq's invasion and occupation of Kuwait.

589. In support of the claim for the fourth school, the Claimant provided a scope of works and an invoice for repair works totalling SAR 289,261 for works carried out between 5 August and 29 November 1990. The Panel concludes that the work was carried out prior to military operations, including the occupation and battle of Al Khafji, that took place in the Eastern Province between 15 January and 2 March 1991.

590. Although the Claimant alleged that some damage was caused to the schools as a result of accommodating Kuwaiti refugees, no evidence in support of this assertion was provided.

591. The Panel therefore finds that the Claimant has not provided evidence sufficient to verify and value the claim for real property damage to the fourth school and recommends no award of compensation.

(c) Recommendation

592. Based on its findings, the Panel recommends no award of compensation for real property.

2. Other tangible property (SAR 139,514)

(a) Facts and contentions

593. The Claimant seeks compensation for items of tangible property, including school furniture, equipment and electrical items, that it asserts were lost or damaged from the four school buildings in Al Khafji.

594. The Claimant asserts that the losses of one school resulted from accommodating Kuwaiti refugees while the losses of the remaining three school buildings arose as a result of military operations in Al Khafji. General damage reports were provided in support of the claims, together with some evidence relating to the losses from the fourth school.

(b) Analysis and valuation

595. The Panel finds that other tangible property damage to the schools arising as a result of military operations is, in principle, compensable for the reasons stated at paragraph 37 above. The Panel also finds that other tangible property damage arising as a result of accommodating refugees in one school building is, in principle, compensable for the reasons stated at paragraph 49 above.

596. The Panel finds that the evidence is insufficient to verify and value the claim for other tangible property losses from three of the schools. However, some evidence was provided in support of the claim for losses from the fourth school.

(c) Recommendation

597. In the light of the evidence, the Panel recommends an award of SAR 2,162 for other tangible property.

3. Payment or relief to others (SAR 150,000)

(a) Facts and contentions

598. The Claimant seeks compensation for overtime payments made to five staff members who assisted refugees during the period from 2 August 1990 to 2 March 1991. Apart from a statement setting out the calculations for overtime in respect of the five listed staff members, no other evidence was provided in support of the claim.

(b) Analysis and valuation

599. The Panel finds that for the reasons stated at paragraphs 52 to 54 above, incremental overtime costs that were incurred in providing assistance to refugees are, in principle, compensable.

600. However, the Panel finds that the evidence is insufficient to verify and value the claim and therefore recommends no award of compensation.

(c) Recommendation

601. Based on its findings, the Panel recommends no award of compensation for payment or relief to others.

4. Recommendation for Department of Education for Girls

602. Based on its findings regarding the Claim by the Department of Education for Girls, the Panel recommends compensation in the total amount of SAR 2,162.

Table 20. Recommended compensation for Department of Education for Girls

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Real property	9,360,486	9,360,486	nil
Other tangible property	139,514	139,514	2,162
Payment or relief to others	150,000	150,000	nil
Total	9,650,000	9,650,000	2,162

T. Al Alamein Sports Club (UNCC Claim No. 5000231)

603. The Claimant is a social club based in Al Khafji that organizes sports, social and cultural activities. It is a Saudi Arabian Government entity that is affiliated with the General Presidency of Youth Welfare, from which it receives its funding. The General Presidency of Youth Welfare itself receives budgetary allocations through the Ministry of Finance and National Economy.

1. Real property (SAR 2,480)

(a) Facts and contentions

604. The Claimant seeks compensation for the repair of real property damage to the doors and windows of the club's administration building, alleged to have occurred as a result of military operations in Al Khafji.

(b) Analysis and valuation

605. The Panel finds that real property damage to the club's administration building arising as a result of military operations is, in principle, compensable for the reasons stated at paragraph 37 above. However, the Panel finds that the evidence is insufficient to verify and value the full amount claimed.

(c) Recommendation

606. In the light of the evidence, the Panel recommends an award of SAR 1,240 for real property.

2. Other tangible property (SAR 131,805)

(a) Facts and contentions

607. The Claimant seeks compensation for sporting and office equipment alleged to have been stolen from the club's premises during the occupation of Al Khafji by Iraqi forces, the subsequent battle and the period of evacuation of the town which the Claimant asserts was ordered by the Saudi Arabian military commander.

(b) Analysis and valuation

608. For the reasons stated at paragraphs 37 and 107 above, the Panel finds that the claim for other tangible property damage in Al Khafji is, in principle, compensable. Adjustments for depreciation to the amount claimed were made in accordance with paragraph 76 above.

(c) Recommendation

609. In the light of the evidence, the Panel recommends an award of SAR 31,299 for other tangible property.

3. Evacuation costs (SAR 21,000)

(a) Facts and contentions

610. The Claimant seeks compensation for the costs of evacuating sports coaches and other staff members from Al Khafji and for providing them with accommodation, meals and domestic transport fares. In its response to the article 34 notification, the Claimant purported to increase the amount claimed to SAR 22,000.

(b) Analysis and valuation

611. For the reasons stated at paragraph 170 above, the Panel finds that the claim amount for evacuation costs is limited to SAR 21,000.

612. The Panel finds that costs of evacuating staff as a result of military operations or the threat of military action in Al Khafji are, in principle, compensable in accordance with paragraph 34(a) of Governing Ccuncil decision 7. However, the evidence is insufficient to verify and value the full amount claimed.

(c) Recommendation

613. In the light of the evidence, the Panel recommends an award of SAR 12,600 for evacuation costs.

4. Recommendation for Al Alamein Sports Club

614. Based on its findings regarding the Claim by the Al Alamein Sports Club, the Panel recommends compensation in the total amount of SAR 45,139.

Table 21. Recommended compensation for Al Alamein Sports Club

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Real property	2,480	2,480	1,240
Other tangible property	131,805	131,805	31,299
Evacuation Costs	21,000	21,000	12,600
Total	1439	155,285	45,139

U. Goodness Preaching Authority (UNCC Claim No. 5000232)

615. The Claimant is a Saudi Arabian Government entity that is responsible for providing guidance on Islamic teaching. 70/

1. Other tangible property (SAR 4,505)

(a) Facts and contentions

616. The Claimant seeks compensation for damage or loss of tangible property, including office furniture and equipment, from its office in Al Khafji that it alleges to have resulted from military operations in that town.

(b) Analysis and valuation

617. For the reasons stated at paragraphs 37 and 107 above, the Panel finds that the claim for other tangible property in Al Khafji is, in principle, compensable. Adjustments for depreciation to the amount claimed were made in accordance with paragraph 76 above.

(c) Recommendation

618. In the light of the evidence, the Panel recommends an award of SAR 1,352 for other tangible property.

2. Public service expenditures (SAR 4,500)

(a) Facts and contentions

619. The Claimant asserts that during Iraq's invasion and occupation of Kuwait, damage occurred to its building and contents in Al Khafji. The Claimant asserts that the building damage was such that it was necessary for the Claimant to find temporary accommodation in Dammam until repairs could be undertaken. However, as the building was leased, these repairs were undertaken at no cost to the Claimant and therefore do not form part of this Claim.

620. In its response to the article 34 notification, the Claimant states that costs were incurred in moving offices temporarily to Dammam. The amount of these costs is not stated. It is assumed that the amount of SAR 4,500, representing the balance of the amount claimed for tangible property and the total amount claimed, is the amount claimed for the costs of moving to Dammam.

(b) Analysis and valuation

621. The Panel finds that costs incurred in moving offices due to damage caused to the Claimant's building in Al Khafji as a result of military operations are, in principle, compensable pursuant to paragraph 34(a) of Governing Council decision 7.

622. However, the Claimant has not provided any evidence to verify and value its claim for the costs of moving to Dammam. The Panel finds that there is insufficient evidence to demonstrate that a loss was sustained by the Claimant and therefore recommends no award of compensation.

(c) Recommendation

623. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

3. Recommendation for Goodness Preaching Authority

624. Based on its findings regarding the Claim by the Goodness Preaching Authority, the Panel recommends compensation in the total amount of SAR 1,352.

Table 22. Recommended compensation for Goodness Preaching Authority

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Other tangible property	4,505	4,505	1,352
Public service expenditures	4,500	4,500	nil
Total	9,005	9,005	1,352

V. Ministry of Education (Dammam) (UNCC Claim No. 5000235)

625. The Ministry of Education is a Government entity that is responsible for primary and secondary schools in Saudi Arabia. The Ministry of Education has filed three claims with the Commission, each of which relates to a different region in Saudi Arabia.

626. The Ministry of Education in Dammam is responsible for primary and secondary schools in the Eastern Province of Saudi Arabia, including Dammam and Al Khafji.

1. Real property (SAR 1,650,285)

(a) Facts and contentions

627. The Claimant alleges that a number of its school buildings in Al Khafji and Dammam suffered damage both as a result of military operations in the Eastern Province and as a result of accommodating Kuwaiti refugees during the period 2 August 1990 to 2 March 1991. The Claimant states that the vast majority of the damage arose as a result of accommodating Kuwaiti refugees in the Eastern Province.

628. The Claim includes an amount of SAR 632,500 for the costs of repairing the student house at Al Khafji, where the evidence indicates 307 refugees were accommodated.

629. The Claim also includes an amount of SAR 747,785 for damage to nine intermediate schools. The evidence for intermediate schools indicates that two of the schools were used to accommodate Kuwaiti refugees, while a third school suffered damage as a result of military operations or the accommodation of refugees in the Eastern Province. No evidence was provided in support of the amounts asserted for the remaining six intermediate schools.

630. The Claimant also seeks SAR 270,000 for damage to the water network. An undated internal damage report which estimates the cost of the repair works to be SAR 270,000 was provided in support of the claim.

(b) Analysis and valuation

631. The Panel finds that real property damage to the schools arising as a result of military operations is, in principle, compensable for the reasons stated at paragraph 37 above. The Panel also finds that real property damage to the schools arising as a result of accommodating refugees is, in principle, compensable for the reasons stated at paragraph 49 above.

632. With respect to the intermediate schools, the Panel finds that the evidence was sufficient only to verify and value the claim for repair costs asserted in respect of three of the nine intermediate schools.

633. The Panel finds that the Claimant has not provided evidence sufficient to verify and value the claim for costs of repairing the water network and therefore recommends no award of compensation.

634. Adjustments for betterment and depreciation to the amounts claimed for the student house and three intermediate schools were made in accordance with paragraph 76 above.

(c) Recommendation

635. In the light of the evidence, the Panel recommends an award of SAR 233,229 for real property.

2. Other tangible property (SAR 3,689,500)

(a) Facts and contentions

636. The Claimant seeks compensation for other tangible property losses it alleges were incurred as a result of accommodating Kuwaiti refugees in its buildings.

637. In the original statement of claim, a total amount of SAR 3,659,500 was claimed in respect of other tangible losses suffered by a number of secondary schools, a library, scout block and student homes in the region. However, the Panel notes that this amount appears to be an arithmetical error, since the separate loss elements asserted in the statement of claim total SAR 3,689,500.

638. In the revised statement of claim, filed in early 1999, an additional amount of SAR 955,325 was sought by the Claimant in respect of other tangible property damage to 23 primary schools. In addition, the revised statement of claim sought compensation in the amount of SAR 1,018,500 for damage to the student home at Al Khafji, an increase to the amount of SAR 1,016,000 claimed in the original statement of claim for this loss element.

(b) Analysis and valuation

639. For the reasons stated at paragraph 429 above, the Panel finds that the Claimant is not permitted to increase the amount claimed or add a new claim. The claim amount for other tangible property is therefore limited to SAR 3,689,500.

640. The Panel finds that in considering all the evidence for the Claim, the claim for SAR 632,500 for real property damage at the Al Khafji student home is duplicated in the claim for other tangible property damage at the same building. A claim for SAR 35,000 for wardrobes is also duplicated. Therefore, the amount claimed for other tangible property damage is reduced to SAR 3,022,000.

641. The Panel finds that other tangible property damage arising as a result of accommodating refugees in the schools is, in principle, compensable for the reasons stated at paragraph 49 above. Adjustments for

depreciation to the amount claimed were made in accordance with paragraph 76 above.

(c) Recommendation

642. In the light of the evidence, the Panel recommends an award of SAR 226,650 for other tangible property.

3. Recommendation for Ministry of Education (Dammam)

643. Based on its findings regarding the Claim by the Ministry of Education (Dammam), the Panel recommends compensation in the total amount of SAR 459,879.

Table 23. Recommended compensation for Ministry of Education (Dammam)

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Real property	1,650,285	1,650,285	233,229
Other tangible property	3,689,500	3,022,000	226,650
Total	5,339,785	4,672,285	459,879

W. Ministry of Education (Hafr Al Baten) (UNCC Claim No. 5000236)

1. Real property (SAR 508,500)

(a) Facts and contentions

644. The Claimant seeks compensation for damage asserted to have been caused by an Iraqi Scud missile explosion near the Abou Bakr School and student centre at Hafr Al Baten, which is located close to the northern border of Saudi Arabia with Iraq. The Claimant asserts that the explosion caused damage to the exterior and the interior of the buildings that necessitated repairs to doors, windows and cracks and fissures in walls. The Claimant seeks SAR 77,550 for the costs of repairing the damage caused by the Scud missile explosion. Contemporaneous video footage, including news reports, of Scud missile attacks over Hafr Al Baten and damage resulting therefrom was provided during the on-site inspection.

645. The Claimant also seeks compensation in the amount of SAR 430,950 for damage to its sports centre and grounds in Hafr Al Baten that was incurred as a result of their use as a training camp for Saudi Arabian volunteers and as a prisoner of war ("POW") camp for Iraqi POWs during the period from 2 August 1990 to 2 March 1991.

646. The Claimant asserts that Saudi Arabia had to recruit and train civilians to form militias in order to defend the civilian population from the risk of Iraqi hostilities. The Claimant alleges that use of its facilities as a training centre and POW camp caused deterioration of the grounds and water pipes. The Claimant further asserts that it was required to remove debris, including wood and barbed wire; repair and replace the damaged water network and the grass surface of the football field at the sports centre; and repair and replace damaged property. The Claimant further states that up to 70 per cent of the damage resulted from the use of the areas as "accommodation camps".

647. The Claimant could not state the respective dates when the sports centre was used as a training camp and POW camp, but provided a translated copy of an urgent cable, dated 4 October 1990, from the Minister of Education to the Director of Education, Hafr Al Baten, ordering the handing over of the sports stadium to military forces. The Claimant estimated the total number of occupants to be 10,000 men, but no breakdown between volunteer and POW occupants was provided, despite requests in the article 34 notification and during the on-site inspection. No other evidence of use or occupation of the facilities by the volunteers or POWs was provided in support of the claim.

(b) Analysis and valuation

648. For the reasons stated at paragraph 37 above, the Panel finds that the claim for real property damage caused by a Scud missile attack to be, in principle, compensable. However, the Panel finds that the evidence is

insufficient to verify and value the full amount claimed in respect of the damage.

649. With respect to the sports facilities used as a training camp as part of Saudi Arabia's participation in military operations against Iraq, the Panel recommends no award of compensation for the reasons stated at paragraph 40 above. Further, with respect to the use of facilities as a POW camp, the Panel finds that the evidence is insufficient to demonstrate the circumstances and the amount of the claim for damage and therefore recommends no award of compensation.

(c) Recommendation

650. Based on its findings, the Panel recommends an award of SAR 23,265 for real property.

2. Other tangible property (SAR 20,618)

(a) Facts and contentions

651. The Claimant asserts that the Scud missile explosion referred to at paragraph 644 above caused the destruction of items of tangible property, including furniture and equipment.

(b) Analysis and valuation

652. For the reasons stated at paragraph 37 above, the Panel finds that the claim for other tangible property damage caused by a Scud missile attack to be, in principle, compensable. However, the Panel finds that the evidence is insufficient to verify and value the full amount claimed.

(c) Recommendation

653. In the light of the evidence, the Panel recommends an award of SAR 6,185 for other tangible property.

3. Recommendation for Ministry of Education (Hafr Al Baten)

654. Based on its findings regarding the Claim by the Ministry of Education (Hafr Al Baten), the Panel recommends compensation in the total amount of SAR 29,450.

Table 24. Recommended compensation for Ministry of Education (Hafr Al Baten)

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Real property	508,500	508,500	23,265
Other tangible property	20,618	20,618	6,185
Total	529,118	529,118	29,450

X. Ministry of Education (Riyadh) (UNCC Claim No. 5000237)

1. Real property (SAR 97,090)

(a) Facts and contentions

655. The Claimant seeks compensation for the costs of repairing real property damage to the Al Fajr Primary school building resulting from accommodating Kuwaiti refugees.

656. The Claimant provided a translated copy of a circular dated 7 August 1990 by the Mayor of Riyadh addressed to "all mayors" authorizing accommodation of Kuwaiti refugees in Government schools in the Riyadh region.

657. Although the precise number of refugees accommodated in the Al Fajr school is not stated, the evidence indicates that approximately 40,900 persons had been provided with accommodation in 236 schools in the Riyadh district as of September 1990.

(b) Analysis and valuation

658. The Panel finds that real property damage arising as a result of accommodating refugees in the schools is, in principle, compensable for the reasons stated at paragraph 49 above. Adjustments for betterment to the amount claimed were made in accordance with paragraph 76 above.

(c) Recommendation

659. Based on its findings, the Panel recommends an award of SAR 82,865 for real property.

2. Recommendation for Ministry of Education (Riyadh)

660. Based on its findings regarding the Claim by the Ministry of Education (Riyadh), the Panel recommends compensation in the total amount of SAR 82,865.

Table 25. Recommended compensation for Ministry of Education (Riyadh)

Loss type	Original claim amount (SAR)	Review amount (SAR)	Recommended compensation (SAR)
Real property	97,090	97,090	82,865
Total	97,090	97,090	82,865

VIII. SUMMARY OF RECOMMENDATIONS

661. The recommendations of the Panel are summarized as follows:

Table 26. Summary of recommended amounts in second instalment of "F2" claims

Ministry or entity	Amount recommended (SAR)	Amount recommended (converted to USD)
Customs Department	2,263,288	604,349
Saudi Railways Organization	616,604	164,647
Ministry of Communications	nil	nil
Real Estate Development Fund	63,332,820	16,911,300
Ministry of PTT (General Directorate for Post & Deputy Ministry for Maintenance and Operations)	1,045,078	279,060
Ministry of PTT (Central Region)	574,373	153,371
Ministry of PTT (Southern Region)	520,016	138,856
Ministry of PTT (Eastern Region)	1,235,160	329,816
Ministry of PTT (Western Region)	1,983,564	529,657
Ministry of Health	18,682,967	4,988,776
Ministry of Information	1,220,429	325,882
Ministry of Higher Education	25,383,170	6,777,883
Ministry of Higher Education - Cultural Attaché	nil	nil
National Guard	2,169,932	579,421
Water & Sewerage Authority (Al-Khafji)	3,518,565	939,537
Municipality of Al-Khafji	2,131,811	569,242
Charity Society	143,476	38,311
Saudi Red Crescent Society	51,750	13,818
Department for the Education of Girls	2,162	577
Al Alamein Sports Club	45,139	12,053
Goodness Preaching Authority	1,352	361
Ministry of Education - Region of Dammam	459,879	122,798
Ministry of Education - Region of Hafr Al Baten	29,450	7,864
Ministry of Education - Region of Riyadh	82,865	22,127
Total	125,493,850	33,509,706

Geneva, 21 September 2000

(Signed) Mr. Francisco Orrego Vicuña
Chairman

(Signed) Mr. Jen Shek Voon
Commissioner

(Signed) Mr. Hans van Houtte
Commissioner

Notes

1/ Governing Council decision 10 (S/AC.26/1992/10).

2/ "F2" claims are the claims submitted by the Governments of the Hashemite Kingdom of Jordan and the Kingdom of Saudi Arabia, except environmental claims, which are being considered by the "F4" Panel.

3/ The Claims originally comprised 25 claims. However, one claim, that of the Ministry of Health - Al Khafji (UNCC Claim No. 5000230) has been consolidated in the claim of the Ministry of Health (UNCC Claim No. 5000215). See further para. 334.

4/ This figure includes an amount of USD 210,000,000 that was asserted by the National Guard in its statement of claim but that was subsequently withdrawn in the National Guard's response to the article 34 notification. See paras. 446 to 447.

5/ Vol. XLV, No. 4, April 1991 (ST/ESA/STAT/SER.1/220). The dates of loss for the purpose of determining the exchange rate to be applied to calculate the recommended amounts of compensation are described in paras. 78 to 79 of this report.

6/ The "Original amount claimed" is that amount asserted in the Claimants' statements of claim. It is stated in the original currency in which the amount was claimed.

7/ The "Review amount" is that amount upon which the Panel bases its review of the claim. It includes corrections of any arithmetical errors that were made in the statements of claim and any reductions in the amount claimed that were made by the Claimants during the period of review of the Claims. The review amount is stated in the original currency in which the amount was claimed, and converted into United States dollars. As the Claimants are not permitted to increase amounts claimed by way of their responses to the article 34 notifications, such increases are not included in the review amounts listed in Table 1.

8/ The "Recommended amount" is the amount of compensation which the Panel recommends should be awarded in respect of each of the Claims, and is stated in the original currency in which the amount was claimed and converted into United States dollars.

9/ The amount originally claimed in respect of the Water and Sewerage Authority included a claim in the amount of SAR 1,393,973 for environmental damage. This amount was severed and transferred to the "F4" Panel for future review.

10/ The precise number of refugees who arrived in Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait is difficult to ascertain. The Ministry of Finance, in response to a request by the Commission for further information during the on-site inspection, provided information detailing the number of refugees present in 12 regions of Saudi

Arabia during the relevant period. The Ministry of Finance stated that more than 262,126 refugees entered Saudi Arabia between 2 August 1990 and 2 March 1991.

11/ See also the letter dated 31 January 1991 from the Permanent Representative of Saudi Arabia to the United Nations to the President of the Security Council (S/22180) detailing the support provided to the Allied Coalition Forces in Saudi Arabia.

12/ No Security Council resolution clearly defined the composition of the "Allied Coalition Forces" as such. Rather, resolutions such as Security Council resolutions 665 (1990) and 678 (1990) acknowledged the existence of "Member States co-operating with the Government of Kuwait" and authorised such States to undertake certain measures, including "all necessary means ... to restore international peace and security." By January 1991, a multi-nation coalition, including Saudi Arabia, was participating in military operations against Iraq.

13/ The letter of 31 January 1991 referred to at endnote 10 above provides details of the military support provided by the Saudi Arabian air, naval and ground forces during the period 17 to 27 January 1991. Letters dated 20 and 21 February 1991 and 14 and 28 March 1991 (S/22258, S/22259, S/22350 and S/22413, respectively) provide further details of the participation of Saudi Arabian forces in military operations against Iraq during the period 3 to 26 February 1991.

14/ Three days after the adoption of Security Council resolution 687 (1991), Iraq, in a letter to the Secretary-General and the President of the Security Council, accepted the terms of the resolution, thereby accepting legal responsibility for damage directly caused to Governments, individuals and corporations by its invasion and occupation of Kuwait.

15/ S/AC.26/1991/7/Rev.1, S/AC/26/1992/9, and S/AC.26/1992/15, respectively.

16/ See also "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'F3' claims" (S/AC.26/1999/24), ("First 'F3' Report), para. 23; and "Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to USD 100,000 (category 'C' claims)" (S/AC.26/1994/3), ("First 'C' Report"), at Part II, section D.

17/ The Claim of the Ministry of Information (UNCC Claim No. 5000218) relates to a loss alleged to have occurred in Kuwait City.

18/ The Panel notes that the "E2" Panel, in its "Report and recommendations made by the Panel of Commissioners concerning the second instalment of 'E2' claims" (S/AC.26/1999/6), ("Second 'E2' Report"), stated at para. 54 that "the place where the loss or damage was suffered by the claimant is not in itself determinative of the Commission's competence". See also "Recommendations made by the Panel of Commissioners concerning

individual claims for serious personal injury or death (category 'B' claims)" (S/AC.26.1994/1), ("First 'B' Report"), page 23. Further, the "E2" Panel, in its "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E2' claims" (S/AC.26/1998/7), ("First 'E2' Report) at para. 155, stated that "losses suffered outside of Iraq or Kuwait, at a minimum, must also be specifically and closely related to the invasion and occupation of Kuwait".

19/ First "C" Report, pp. 13-14.

20/ See the "Executive Summary of the report and recommendations made by the Panel of Commissioners appointed to review the Well Blowout Control Claim", (S/AC 26/1996/5), ("'WBC' Claim"), at para. 20, where the "E1" Panel held, in accordance with paragraph 34(a) of Governing Council decision 7, that Iraq is liable for any direct loss, damage or injury whether caused by its own or by the Allied Coalition Forces.

21/ During the on-site inspection, the Claimants provided contemporaneous video footage, including news reports, of Scud missile attacks over Riyadh and Dhahran and damage suffered by the town of Al Khafji as a result of its occupation by Iraqi troops and the battle to liberate the town. The Claimants also provided contemporaneous photographic evidence of property damage in Riyadh and Al Khafji arising as a result of Scud missile attacks and other military operations that took place in those locations, respectively.

22/ Military lessons of the Gulf War, ed. Bruce W. Watson, Greenhill Books, London, 1991, pp. 224-225.

23/ The Ministry of Higher Education and the Ministry of Education seek compensation for real property damage arising as a result of Scud missile attacks in Riyadh and Hafr Al Baten, respectively.

24/ The Customs Department, the Ministry of Post, Telegraph and Telephone, the National Guard, the Water and Sewerage Authority, the Municipality of Al Khafji and other Government entities in Al Khafji, and the Ministry of Education all claim for real and tangible property damage arising as a result of military operations that took place in the Eastern Province of Saudi Arabia during this period.

25/ In a letter dated 6 February 1991 from the Permanent Representative of Saudi Arabia to the United Nations addressed to the President of the Security Council (S/22200), it was stated that "material damage included the destruction of some buildings and facilities in the town of Al Khafji as a result of the Iraqi attack."

26/ See First "E2" Report, para. 157.

27/ S/AC.26/Dec.19 (1994).

28/ The participation of Saudi Arabia's forces in military operations against Iraq is described at para. 17.

29/ See para. 16.

30/ See First "E2" Report, paras. 158-159, 162, where the "E2" Panel examined in some detail what constitutes a threat of military action for the purposes of paragraph 34(a) of Governing Council decision 7.

31/ Given the unique circumstances in which Saudi Arabia was placed during the period of Iraq's invasion and occupation of Kuwait as a result of the threats posed by Iraq to the territory of Saudi Arabia and the incursion of Iraqi troops onto Saudi Arabian soil and the nature of the preventive and protective measures implemented by the Saudi Arabian Government in response thereto, it was reasonable to expect that the implementation of these measures could not be limited to the area directly threatened. The situation in which the Saudi Arabian Government was placed therefore differed from that of corporate claimants, as addressed by the "E2" Panel in its "Report and recommendations made by the Panel of Commissioners concerning the third instalment of 'E2' claims" (S/AC.26/1999/22), ("Third 'E2' Report"), at paras. 62-63.

32/ For example, "Report and recommendations made by the Panel of Commissioners concerning the second instalment of 'F1' claims", (S/AC.26/1998/12), ("Third 'F1' Report"), para. 122; "Report and recommendations made by the Panel of Commissioners concerning the third instalment of 'F1' claims", (S/AC.26/1999/7), ("Fourth 'F1' Report"), para. 140; and "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'F2' claims", (S/AC.26/1999/23), ("First Report"), para. 257.

33/ See Third "F1" Report, para. 122 and Fourth "F1" Report, para. 140.

34/ Kuwait also provided financial assistance to Kuwaiti refugees who were present in Saudi Arabia for all or part of the duration of Iraq's occupation of Kuwait and for some time thereafter. The "F3" Panel in its First Report, at paras. 188-211, held that the support payments made by the Kuwaiti Ministry of Finance were compensable under paragraphs 34(b) and 36 of Governing Council decision 7. However, the Kuwaiti Ministry of Finance asserted that the level of support payments made in Saudi Arabia to Kuwaiti refugees was "quite low". Kuwait asserted that this was due to the fact that the Government of Saudi Arabia provided free accommodation for refugees in a large number of vacant apartment buildings and therefore that housing support for rent was not paid to those families. In addition, the Ministry of Finance asserted that nearly all the medical and educational services that were required by the Kuwaiti refugees present in Saudi Arabia were provided by the Government of Saudi Arabia free of charge.

35/ The Panel notes that the "F1" Panel has drawn a distinction between general expenditures and expenditures specifically incurred in providing humanitarian relief. See Fourth "F1" Report, para. 127.

36/ See also First Report, paras. 103.

37/ First Report, paras. 101, 366. See also "WBC" Claim, para. 162; Third "F1" Report, para. 115; "Report and Recommendations made by the Panel of Commissioners concerning the Fifth Instalment of 'E3' Claims" (S/AC.26/1999/2), ("Fifth 'E3' Report"), para. 205; and First "E2" Report, para. 213.

38/ See First Report, paras. 100-102, 255-257. See also "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E3' claims" (S/AC.26/1998/13), ("First "E3" Report"), paras. 218-219, 379-381.

39/ See Third "E2" Report, para. 100.

40/ The "E3" and "E4" Panels have each determined that claims for incremental travel costs incurred as a direct result of Iraq's invasion and occupation of Kuwait are, in principle, compensable. See Fifth "E3" Report, para. 188; "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E4' claims" (S/AC.26/1999/4), ("First 'E4' Report"), para. 222. See further para. 115.

41/ See First "E2" Report, para. 228. The "E2" Panel in its Third Report took account of the fact that contingency routes were established by the International Civil Aviation Organization (the "ICAO") during the period of Iraq's invasion and occupation of Kuwait. The "E2" Panel held at paras. 97-99 that costs alleged to have been incurred by corporate claimants as a result of re-routing are not compensable as "re-routing is factored into the calculations of operating costs by civil carriers." However, the Panel finds that while the transportation industry takes re-routing into account as part of its normal practice, incidental costs of re-routing were not normally taken into account by the Claimants.

42/ "United Nations Compensation Commission Claim Form for Governments and International Organizations, Instructions for Claimants" ("category 'F' claim form"), para. 4. On 16 October 1992, the Commission's Executive Secretary circulated a letter to the Permanent Representatives of United Nations Member States in which he reiterated the pleading and evidentiary requirements set forth in the Rules and in the category "F" claim form (S/AC.26/1992/Note No. 55).

43/ S/AC.26/Dec.46 (1998).

44/ Military operations took place between 15 January to 2 March 1991. 7 February 1991 is the mid-point of the loss period.

45/ See, for example, First "C" Report, pp. 30-33; First "E2" Report, para. 279; First "E4" Report, para. 227; and "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of claims by Governments and international

organizations (category 'F1' claims)" (S/AC.26/1997/6), ("First 'F1' Report"), para. 100.

46/ Vol. XLV, No.4, April 1991 (ST/ESA/STAT/SER.1/220).

47/ S/AC.26/1992/16.

48/ Category "F" claim form, Part F, Summary of Losses Claimed.

49/ Paragraph 13 of Governing Council decision 9 states that "[i]n a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from the invasion and occupation." The "F3" Panel in its First Report found this statement to be applicable to the Government of Kuwait's property left unguarded, at para. 29 and endnote 12. The "E3" Panel, in its "Report and recommendations made by the Panel of Commissioners concerning the eleventh instalment of 'E3' claims" (S/AC.26/2000/4), ("Eleventh 'E3' Report"), at para. 59 extended application of paragraph 13 to business property left unguarded in Saudi Arabia.

50/ The Panel in its First Report at para. 134 held that increased costs of insurance for transportation of goods in areas subject to military operations or the threat of military action are, in principle, compensable. The "E2" Panel has made a similar finding in its Third Report at paras. 89-93, limiting the compensability of such claims to those for war risk insurance covering the risk of military operations only (as opposed to other risks, such as the risk of terrorist attack). See also the First "F3" Report, para. 63.

51/ On-site inspections are part of the claims development process and provide claimants with an opportunity to submit additional evidence and information in support of amounts previously claimed in order to assist the Panel. However, in providing this evidence and information, claimants may not increase claimed amounts or add new loss elements to the claim.

52/ In relation to military operations in the Persian Gulf, the "E2" Panel in its Third Report found that "[s]hipping operations in the Middle East were significantly affected by Iraq's invasion and occupation of Kuwait". The "E2" Panel found further that Iraq laid mines in the Persian Gulf and that the minefield and the drifting of mines that had broken free posed a grave risk to shipping. The "E2" Panel held that Iraq's laying of mines in the northern part of the Persian Gulf, that is, the waters above the 27th parallel from the Saudi Arabian coast to the western Iranian coast, constituted military operations for the purpose of paragraph 21(a) of decision 7 (relating to corporate claimants and equivalent in terms to paragraph 34(a)). The Saudi Arabian ports of Al Khafji, Jubail and Dammam all fall within this area. See Third "E2" Report, paras. 26, 73.

53/ See paragraph 43.

54/ See also Fourth "F1" Report, para. 138.

55/ See also First "F3" Report, para. 191, in which the "F3" Panel recommended an award of compensation for the purchase of gas masks for Kuwaiti citizens in Saudi Arabia. The "E3" Panel in its Eleventh "E3" Report, para. 167, also recommended compensation for the purchase of gas masks that were provided to claimants' employees in Saudi Arabia.

56/ Fourth "F1" Report, para. 138.

57/ Replies to enquiries by the Commission provide claimants with an opportunity to submit additional evidence in support of amounts previously claimed in order to assist the Panel. However, in providing this evidence and information, claimants may not increase claimed amounts or add new loss elements to the claim. See First Report, para. 120.

58/ See para. 49.

59/ See First "F3" Report, para. 190.

60/ See para. 40.

61/ See Third "E2" Report, para. 91.

62/ The consolidation of these two claims has reduced the total number of Claims from 25 to 24.

63/ See also First "E3" Report, paras. 181-183, 287-289, where the "E3" Panel recommended no compensation for unresolved disputes with the employer.

64/ See "Report and recommendations made by the Panel of Commissioners concerning the second instalment of 'F3' claims", (S/AC.26/2000/R.40), paras. 35-37.

65/ The "B" Panel in its First Report found at para. 69 that, due to the circumstances prevailing at the time of Iraq's invasion and occupation of Kuwait, all traffic accidents involving an Iraqi military vehicle were a direct consequence of Iraq's invasion and occupation of Kuwait and fell within the provisions of the equivalent to paragraph 34(c) of decision 7. The "B" Panel further concluded that "military accidents" in respect of which compensation could be awarded could result from military operations within the meaning of the equivalent to paragraph 34(a) of decision 7, such as an air raid that caused a driver to lose control and overturn his car, or the chasing of a Kuwaiti vehicle by Iraqi forces. None of these circumstances apply to the present Claim.

66/ The "F3" Panel in its First Report at paras. 383-386 held that the reasonable costs of distributing news of an emergency nature (such as details of mine clearance and condition of roads) were direct losses as a result of Iraq's invasion and occupation of Kuwait and were therefore compensable.

67/ See para. 58.

68/ First "F1" Report, para. 96; Eleventh "E3" Report, paras. 60-64.

69/ It is apparent from the evidence that the claim with respect to the shovel is duplicated in the claim for real property damage and is therefore not considered further under other tangible property.

70/ The Claimant's official name in English is the "Society for the Promotion of Virtue and Prevention of Vice."

Annex VI

Decision concerning the second instalment of "F2" claims taken by the Governing Council of the United Nations Compensation Commission at its 101st meeting, held on 7 December 2000 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the second instalment of "F2" claims, covering 24 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amount awarded, based on the recommendations contained in paragraph 661 of the report, is as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Saudi Arabia	22	2	288,958,209	33,509,706

* Previously issued as document S/AC.26/Dec.112 (2000).
1/ The text of the report appears in document S/AC.26/2000/26.

3. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)),

4. Recalls that when payments are made in accordance with decision 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Government of the Kingdom of Saudi Arabia shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Notes that no recommendations have been made for the elements of the claims referred to at paragraphs 446 to 447 and 500 of the report,

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to the Government of the Kingdom of Saudi Arabia.

Annex VII

Decision concerning the review of current UNCC procedures taken by the Governing Council of the United Nations Compensation Commission at its 101st meeting, held on 7 December 2000 at Geneva*

The Governing Council

Decides to approve the conclusions reached by the Working Group on the review of current UNCC procedures, the text of which is annexed to the present decision.

* Previously issued as document S/AC.26/Dec.114 (2000).

Annex

REVIEW OF CURRENT UNCC PROCEDURES

Introduction

1. In September 2000, the Security Council reached an agreement that the current UNCC procedures be reviewed before the end of the year, taking into account the recommendations made by the Executive Secretary. Pursuant to the Governing Council's recommendation, made at the thirty-seventh session, the Working Group has held a number of informal meetings in October and November 2000 for the purpose of carrying out that review, taking into account both the Executive Secretary's recommendations and the proposals put forward by delegations at the meeting held on 30 October 2000. The results of the review are contained in this report.

2. As outlined in the Secretary-General's report to the Security Council of 2 May 1991 (S/22559), the Governing Council has the responsibility for establishing guidelines on all policy matters, the Commissioners are in charge of the verification and valuation of the claims within the guidelines established by the Council and subject to approval by the Governing Council, and the secretariat provides services to, and carries out such tasks assigned to it by, the Council and the Commissioners. The Working Group is satisfied with this division of tasks between the Governing Council, the panels of Commissioners and the secretariat and is of the opinion that the work of the Commission to date has proceeded in a fair and efficient manner. It is not the objective of the Working Group, in conducting the review of current UNCC procedures, to make changes to this division of tasks.

3. The Working Group has considered the following proposals:

(a) the panels of Commissioners shall prepare separate reports on claims exceeding USD 1 billion;

(b) these reports are to be submitted to the Governing Council member states (with translation) at least three months before the session where they are to be considered;

(c) full claim files for such claims shall be forwarded to Iraq for consideration;

(d) Iraq should be given 12 months to consider such claim files, instead of the six months at present;

(e) after having considered these claim files Iraq shall be allowed to submit written views and comments to the panels of Commissioners which are to be reviewed in the reports;

(f) provisions shall be made by the panels of Commissioners to allow Iraqi representatives to participate in oral proceedings in such claims;

(g) the Governing Council shall consider the panels' reports for such claims in the presence of representatives of Iraq who will have the right to express their views on the matter;

(h) the Iraqi request for access to funds to pay for legal and technical experts to assist in its responses to claims is to be satisfied;

(i) Council members should have more time (three months as a minimum) to review panel reports;

(j) upon the request of any member of the Council, any document used by the secretariat or the panels for the processing of the claims should be provided;

(k) a synthetic report should be submitted every six months to the Security Council on the work of the Commission, followed by an oral briefing for and consultations of the Security Council;

(l) every claim file should be made available by the panels to Iraq, so as to enable it to make its comments and observations available in writing;

(m) the time given to Iraq to respond should be increased from six months to 12 months;

(n) panels should transmit their draft recommendations to the claimants and Iraq to get their observations in a limited time period, and the final reports of the panels should be written in the light of the observations made by the parties;

(o) oral proceedings attended by the claimants and Iraqi experts should be scheduled by panels on a systematic basis;

(p) technical expertise for Iraq should be financed by a reasonable amount of the Commission's budget or its operating reserve or any other means deemed appropriate;

(q) up to three months to review reports raising significant legal or technical issue or where substantial compensation is recommended; and

(r) the provision of technical environmental expertise to Iraq for the review of the "F4" environmental claims.

4. After extensive discussions on all proposals, which included an exchange of views of a substantive nature with four Chairmen of the panels of Commissioners, the Working Group has agreed upon the following measures. The new arrangements will take effect as of the date of their adoption.

5. As these measures are being implemented immediately, the secretariat will inform the Governing Council as to any initial practical problems that may arise and where flexibility will be required, as will be the case, for instance, with the review period concerning the report on the first instalment of "F4" environmental monitoring and assessment claims.

I. TIME ALLOWED FOR THE REVIEW OF REPORTS

6. The current practice of the secretariat is to circulate the reports and recommendations of the panels of Commissioners to Governing Council members, in all official UN languages, at least 30 days in advance of a session. However, depending on the nature of the report, it may be necessary to circulate certain reports and recommendations in advance of this 30-day period. The language of article 40(3) of the Provisional Rules for Claims Procedure allows for such flexibility in the sending of reports by stating that reports must be circulated "at least 30 days in advance of the session".

7. In the opinion of the Working Group a three-month review period should be given to the following reports:

(a) those reports containing claims with a recommended value of USD 100 million or more, with the exception of claims falling outside the jurisdiction of the Commission;

(b) reports where new methodologies are elaborated; and

(c) reports that contain significant legal, factual and technical issues.

8. It is for the panels to assess in advance whether such legal, factual or technical issues exist. The secretariat will inform the Council in advance where the panels have made such conclusions as to the need to provide reports for the three-month review. In case a three-month period was not provided for in advance, the Council may decide to extend the review period to three months whenever it is of the opinion that a particular report contains significant legal, factual or technical issues.

9. The three-month review period will start to run from the time that the report is available in all official UN languages.

10. In order to assist the Council members in the review of the reports referred to in paragraph seven, the secretariat will make a presentation on the claims contained in those reports at the commencement of the three-month review period. The secretariat is encouraged to continue the current practice of providing explanations and information regarding recommended awards to the members of the Governing Council.

11. The Council members will use this additional time to facilitate a decision on the panel's recommendations at the Council session following the three-month period.

12. The panels of Commissioners will prepare a separate report for each claim with a recommended value of USD 1 billion or more.

13. The Governing Council encourages the panels to provide it in their reports, to the extent possible, with non-confidential factual and technical information that served as the basis of the panels' recommendations, thus facilitating the Council's review.

II. TRANSMISSION OF CLAIM FILES TO IRAQ

14. The secretariat provided a briefing to the Working Group on the current practice with respect to the classification of claims as being "unusually large or complex" and the transmission of claim files to Iraq, and outlined the criteria in a note that was distributed to members on 31 October 2000. It is the Working Group's understanding that the criteria used by the panels to determine whether to transmit a claim file to Iraq normally include:

(a) the Government of the Republic of Iraq is a party to a contract forming part of the subject matter of the claim; or

(b) if the situs of the alleged loss is in Iraq; or

(c) if the Panel determines that the transmission of the claim file will otherwise facilitate the Panel's verification and valuation of the claim; or

(d) the amount claimed is more than USD 100 million.

15. It is the understanding of the Working Group that, when the criteria referred to in paragraph 14 are fulfilled, as a practical matter, full claim files (consisting of the claim form, statement of claim and all of the documents provided by the claimant as attached to the statement of claim) are sent to Iraq unless such claims fall outside the jurisdiction of the Commission.

16. The Working Group is of the opinion that the discretion to send claim files to Iraq should remain with the panels of Commissioners. However, the panels are encouraged to continue to apply the existing criteria relating to the transmission of files to Iraq.

17. The Working Group would welcome the discussion of this issue by the Chairmen of the panels of Commissioners at their next annual joint meeting, to help ensure consistency in the transmission of files.

18. At the June 2000 session, the Governing Council authorized the panels to make claim files available to Iraq prior to the formal commencement of the review of an instalment of claims. This decision may allow for some flexibility in the application of the six-month response rule. The Governing Council encourages the panels to make use of this flexibility to the maximum extent possible. However, the Working Group recommends that an additional six months should be given to Iraq to respond to claims with an asserted value of USD 1 billion or more that have not yet been taken up by the panels, or are under preparation, with the exception of claims falling outside the jurisdiction of the Commission.

19. Iraq's written responses concerning the claims under consideration by the panel will be reflected by the panels in their reports.

III. ORAL PROCEEDINGS

20. The secretariat explained the existing practice with respect to the convening of oral proceedings. Pursuant to article 36 of the Rules, panels of Commissioners may invite parties to present their views in oral proceedings.

21. The Working Group agrees that discretion in convening oral proceedings remains with the panels of Commissioners. The panels will schedule oral proceedings where the claims have an asserted value of USD 1 billion or more, with the exception of claims falling outside the jurisdiction of the Commission or that are otherwise not compensable. The Governing Council encourages the panels to also schedule oral proceedings where the panels have determined that it would be useful to hear the views of the claimants and Iraq, and where:

(a) the claims contain significant technical, legal and factual issues; or

(b) the claims are substantive "F4" environmental claims.

IV. TECHNICAL ASSISTANCE

22. Taking into account the Executive Secretary's recommendations, the Working Group discussed the issue of making funds available to Iraq for purposes of hiring experts to assist in preparing Iraq's responses to claims in general and in particular the environmental claims. It has decided to consider further, with the assistance of the secretariat, various proposals relating to the provision of assistance to Iraq, noting that some Council members indicated that such proposals should not relate to claims other than the "F4" claims. The Working Group will continue its efforts to formulate acceptable specific recommendations, at the latest at the thirty-ninth session of the Governing Council, to be held in March 2001. In the meantime the Working Group recommends that the Governing Council should urge the "F4" panel to use its experts to ensure the full development of the facts and relevant technical issues, as well as to obtain the full range of views including those of the claimants and Iraq.

S/2000/1249

Twelfth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure*

1. The present report identifies, pursuant to article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) (the "Rules"), corrections to approved claim awards in categories "A" and "C".

I. CORRECTIONS TO CATEGORY "A" CLAIM AWARDS

2. Recommendations for corrections to category "A" claims include duplicate claims and corrections to family member claims.

A. Category "A" duplicate claims

3. Since the eleventh article 41 report to the Council (S/AC.26/2000/23), a total of 24 claims have been found to be duplicates of other claims also awarded compensation in category "A".

4. No compensation should have been awarded for these duplicate claims and the total recommended awards should be revised accordingly. Table 1, infra, identifies the Governments concerned, the instalments to be adjusted, the total number of claims to be corrected and the total amount by which the instalment will be reduced.

Table 1. Category "A" duplicate claims

Country	Instalment	Total number of duplicate claims	Amount of reduction (USD)
Bosnia and Herzegovina	Special	12	48,000.00
India	4	4	23,000.00
	5	4	13,000.00
Russian Federation	2	1	4,000.00
	4	1	8,000.00
	5	1	4,000.00
	6	1	4,000.00
Total		24	104,000.00

B. Corrections to category "A" family member claims

5. Two claims originally filed as family claims have been found to be claims submitted by individuals. Accordingly, as identified in table 2, infra, two claims submitted by the Russian Federation in the fourth instalment have had their claims reduced from USD 8,000.00 to USD 4,000.00.

* Previously issued as document S/AC.26/2000/27.

Table 2. Category "A" family claim corrections

Country	Instalment	Number of claims affected	Amount of net effect (USD)
Russian Federation	4	2	(8,000.00)
Total		2	(8,000.00)

6. The adjusted claim awards for the second, fourth to sixth and special Bosnia and Herzegovina instalments, and the total revised recommended awards for category "A" claims, are identified in tables 1-6 of annex I.

II. CORRECTIONS TO CATEGORY "C" CLAIM AWARDS

7. Corrections to category "C" claim awards include corrections that arise from computational, clerical, typographical or other errors contained in the electronic category "C" claims.

8. For this report, approximately 1,000 category "C" claims were reviewed in response to requests presented to the Commission by submitting Governments. In 41 claims, specific computational, clerical, typographical or other errors relating to discrepancies between the paper and electronic claims were identified. Accordingly, corrections have been recommended in accordance with the Panel's decisions and recommendations relating to loss criteria and valuation in category "C" claims, as summarized in the seventh instalment report (S/AC.26/1999/11).

9. The majority of the corrections relate to "C6-Salary" losses. Such losses have been corrected in accordance with the Panel's decisions and recommendations in paragraphs 250 to 275 of the seventh instalment report. Other corrections relate to personal property ("C4-CPHO") losses, as discussed at paragraphs 178 to 199 of the same report. Still others relate to real property ("C7-Real property") losses, as discussed at paragraphs 300 to 326 and individual business ("C8-Business)" losses, as discussed at paragraphs 327 to 368. In two claims, the status of detained or missing claimants, as discussed in paragraphs 17 to 19 of the report, was resolved. The total number of pending claims on behalf of detained or missing claimants has therefore been reduced to 338.

10. It is therefore recommended that corrections be implemented in 41 claims for a net increase of USD 618,398.37 in awarded amounts as reflected in table 3, infra.

Table 3. Miscellaneous corrections to category "C" awards

Country or international organization	Instalment	Number of claims affected	Amount of net effect (USD)
Croatia	Seventh	1	12,092.42
Germany	Seventh	1	(12,962.96)
India	Second	1	(518.68)
	Sixth	1	(3,512.11)
Jordan	Sixth	1	96,415.22
	Seventh	2	105,314.88
Kuwait	First	1	no change a/
	Seventh	16	222,422.68
Lebanon	Second	2	69,123.53
	Seventh	1	8,550.18
Pakistan	Seventh	1	5,709.34
Spain	Sixth	1	5,000.00
Sudan	Fifth	1	6,889.27
	Sixth	4	20,487.89
	Seventh	1	2,709.34
United Kingdom	Fifth	1	25,114.05
UNDP Kuwait	Sixth	2	38,160.90
UNHCR Canada	Sixth	1	8,852.11
	Seventh	1	3,360.00
UNRWA Gaza	Sixth	1	5,190.31
Total		41	618,398.37

a/ The correction reflects the result of the processing of one claim where the pending MPA loss of a detained or missing person was resolved with a recommended amount of zero.

11. The adjusted claim awards for the first, second and fifth to seventh instalments, and the total revised recommended awards for category "C" claims, are identified in tables 1-6 of annex II.

Annex I

CORRECTED CATEGORY "A" CLAIM AWARDS

1. Based on the corrections reported in paragraphs 2 to 6 of this report, supra, the category "A" claims aggregate corrected amounts per country, by claim instalment, are as follows

Table 1. Second instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
Russian Federation	4,296,000.00	4,292,000.00

Table 2. Fourth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	146,280,000.00	146,257,000.00
Russian Federation	9,016,000.00	9,000,000.00

Table 3. Fifth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	147,567,000.00	147,554,000.00
Russian Federation	8,328,000.00	8,324,000.00

Table 4. Sixth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
Russian Federation	3,396,000.00	3,392,000.00

Table 5. Special instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
Bosnia and Herzegovina	812,000.00	764,000.00

2. Based on the above corrections, the revised category "A" claim total recommended awards by instalment are as follows:

Table 6. Revised total recommended awards for category "A" claims

Instalment	Previous total recommended award (USD) a/	Corrected total recommended award (USD)
First	189,599,500.00	no change
Second	641,244,500.00	641,240,500.00
Third	531,496,500.00	no change
Fourth	732,644,000.00	732,605,000.00
Fifth	782,653,000.00	782,636,000.00
Sixth	315,396,000.00	315,392,000.00
Special (Pakistan)	2,554,500.00	no change
Special (Bosnia and Herzegovina)	812,000.00	764,000.00

a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33, 38, 67 and 101 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996), S/AC.26/Dec.67 (1999) and S/AC.26/Dec.101 (2000)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57, 71, 79, 85, 95, 99 and 109 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998), S/AC.26/Dec.71 (1999), S/AC.26/Dec.79 (1999), S/AC.26/Dec.85 (1999), S/AC.26/Dec.95 (2000), S/AC.26/Dec.99 (2000) and S/AC.26/Dec.109 (2000)).

Annex II

CORRECTED CATEGORY "C" CLAIM AWARDS

1. Based on the corrections reported in paragraphs 7 to 10 of this report, supra, the category "C" claims aggregate corrected amounts per country, by claim instalment, are as follows:

Table 1. First instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Kuwait	11,403,243.00	no change a/

a/ The correction reflects the result of the processing of one claim where the pending MPA loss of a detained or missing person was resolved with a recommended amount of zero.

Table 2. Second instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
India	70,386,682.69	70,386,164.01
Lebanon	26,553,427.20	26,622,550.73

Table 3. Fifth instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Sudan	15,976,107.94	15,982,997.21
United Kingdom	2,647,548.89	2,672,662.94

Table 4. Sixth instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
India	104,976,428.50	104,972,916.39
Jordan	181,695,730.15	181,792,145.37
Spain	267,255.38	272,255.38
Sudan	21,732,162.24	21,752,650.13
UNDP Kuwait	10,397,658.83	10,435,819.73
UNHCR Canada	958,580.14	967,432.25
UNRWA Gaza	2,574,693.22	2,579,883.53

Table 5. Seventh instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Croatia	193,451.02	205,543.44
Germany	2,241,250.07	2,228,287.11
Jordan	281,976,641.68	282,081,956.56
Kuwait	787,946,915.96	788,169,338.64
Lebanon	15,671,083.55	15,679,633.73
Pakistan	74,567,250.14	74,572,959.48
Sudan	14,831,979.54	14,834,688.88
UNHCR Canada	1,121,785.59	1,125,145.59

2. Based on the above corrections, the revised category "C" claim total recommended awards by instalment are as follows:

Table 6. Revised total recommended awards for category "C" claims

Instalment	Previous total recommended award (USD) a/	Corrected total recommended award (USD)
First	51,086,478.00	no change
Second	431,675,084.34	431,743,689.19
Third	324,883,154.77	no change

Instalment	Previous total recommended award (USD) a/	Corrected total recommended award (USD)
Fourth	654,598,151.73	no change
Fifth	735,443,727.66	735,475,730.98
Sixth	765,543,093.66	765,713,687.98
Seventh	1,932,424,233.91	1,932,771,429.79

a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 25, 36, 37, 39, 41, 52 and 70 (S/AC.26/Dec.25 (1994),(S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996), S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998) and S/AC.26/Dec.70 (1999)) and subsequent corrections approved by the Governing Council in its decisions 39, 41, 52, 85, 95 and 99 (S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998), S/AC.26/Dec.85 (1999), S/AC.26/Dec.95 (2000)), and S/AC.26/Dec.99 (2000).

Annex IX

Decision concerning the correction of awards for category "A" and "C" claims pursuant to article 41 of the Provisional Rules for Claims Procedure taken by the Governing Council of the United Nations Compensation Commission at its 101st meeting, held on 7 December 2000 at Geneva*

The Governing Council,

Having received, in accordance with article 41 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) ("the Rules"), a report by the Executive Secretary concerning the correction of awards for claims in categories "A" and "C" 1/,

1. Decides, pursuant to article 41 of the Rules, to correct the amounts of the approved awards for Governments and international organizations. 2/ The aggregate corrected amounts per country and instalment, are as follows:

Table 1. Second instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
Russian Federation	4,296,000.00	4,292,000.00

* Previously issued as document S/AC.26/Dec.113 (2000).

1/ The text of the report appears in document S/AC.26/2000/27.

2/ In conformity with the provisions on confidentiality in the Provisional Rules for Claims Procedure (art. 30, para. 1 and art. 40, para. 5), information concerning the amount to be paid to each individual claimant will not be made public, but will be provided to each respective Government and international organization separately.

Table 2. Fourth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	146,280,000.00	146,257,000.00
Russian Federation	9,016,000.00	9,000,000.00

Table 3. Fifth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	147,567,000.00	147,554,000.00
Russian Federation	8,328,000.00	8,324,000.00

Table 4. Sixth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
Russian Federation	3,396,000.00	3,392,000.00

Table 5. Special instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
Bosnia and Herzegovina	812,000.00	764,000.00

Table 6. First instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Kuwait	11,403,243.00	no change a/

a/ The correction reflects the result of the processing of one claim where the pending MPA loss of a detained or missing person was resolved with a recommended amount of zero.

Table 7. Second instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
India	70,386,682.69	70,386,164.01
Lebanon	26,553,427.20	26,622,550.73

Table 8. Fifth instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Sudan	15,976,107.94	15,982,997.21
United Kingdom	2,647,548.89	2,672,662.94

Table 9. Sixth instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
India	104,976,428.50	104,972,916.39
Jordan	181,695,730.15	181,792,145.37
Spain	267,255.38	272,255.38
Sudan	21,732,162.24	21,752,650.13
UNDP Kuwait	10,397,658.83	10,435,819.73
UNHCR Canada	958,580.14	967,432.25
UNRWA Gaza	2,574,693.22	2,579,883.53

Table 10. Seventh instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Croatia	193,451.02	205,543.44
Germany	2,241,250.07	2,228,287.11
Jordan	281,976,641.68	282,081,956.56
Kuwait	787,946,915.96	788,169,338.64
Lebanon	15,671,083.55	15,679,633.73
Pakistan	74,567,250.14	74,572,959.48

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Sudan	14,831,979.54	14,834,688.88
UNHCR Canada	1,121,785.59	1,125,145.59

2. Decides also that, based on the above corrections, the revised recommended awards by instalment are as follows:

Table 11. Revised total recommended awards for category "A" claims

Instalment	Previous total recommended award (USD) a/	Corrected total recommended award (USD)
First	189,599,500.00	no change
Second	641,244,500.00	641,240,500.00
Third	531,496,500.00	no change
Fourth	732,644,000.00	732,605,000.00
Fifth	782,653,000.00	782,636,000.00
Sixth	315,396,000.00	315,392,000.00
Special (Pakistan)	2,554,500.00	no change
Special (Bosnia and Herzegovina)	812,000.00	764,000.00

a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33, 38, 67 and 101 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996), S/AC.26/Dec.67 (1999) and S/AC.26/Dec.101 (2000)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57, 71, 79, 85, 95, 99 and 109 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998), S/AC.26/Dec.71 (1999), S/AC.26/Dec.79 (1999), S/AC.26/Dec.85 (1999), S/AC.26/Dec.95 (2000), S/AC.26/Dec.99 (2000) and S/AC.26/Dec.109 (2000)).

Table 12. Revised total recommended awards for category "C" claims

Instalment	Previous total recommended award (USD) a/	Corrected total recommended award (USD)
First	51,086,478.00	no change
Second	431,675,084.34	431,743,689.19
Third	324,883,154.77	no change
Fourth	654,598,151.73	no change

Instalment	Previous total recommended award (USD) a/	Corrected total recommended award (USD)
Fifth	735,443,727.66	735,475,730.98
Sixth	765,543,093.66	765,713,687.98
Seventh	1,932,424,233.91	1,932,771,429.79

a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 25, 36, 37, 39, 41, 52 and 70 (S/AC.26/Dec.25 (1994),(S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996), S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998) and S/AC.26/Dec.70 (1999)) and subsequent corrections approved by the Governing Council in its decisions 39, 41, 52, 85, 95 and 99 (S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998), S/AC.26/Dec.85 (1999), S/AC.26/Dec.95 (2000)), and S/AC.26/Dec.99 (2000)).